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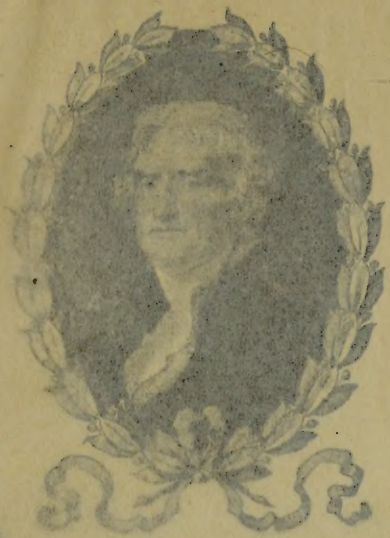
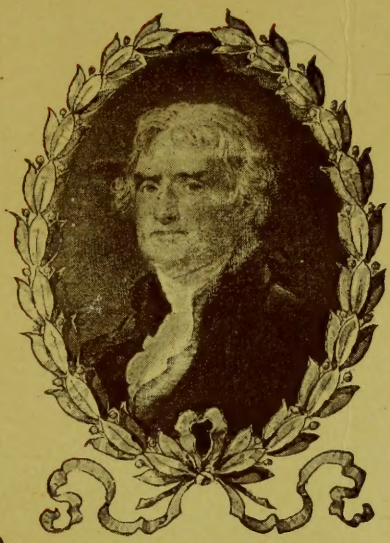
IN CONGRESS, JULY 4, 17
The unanimous Declaration of the thirteen



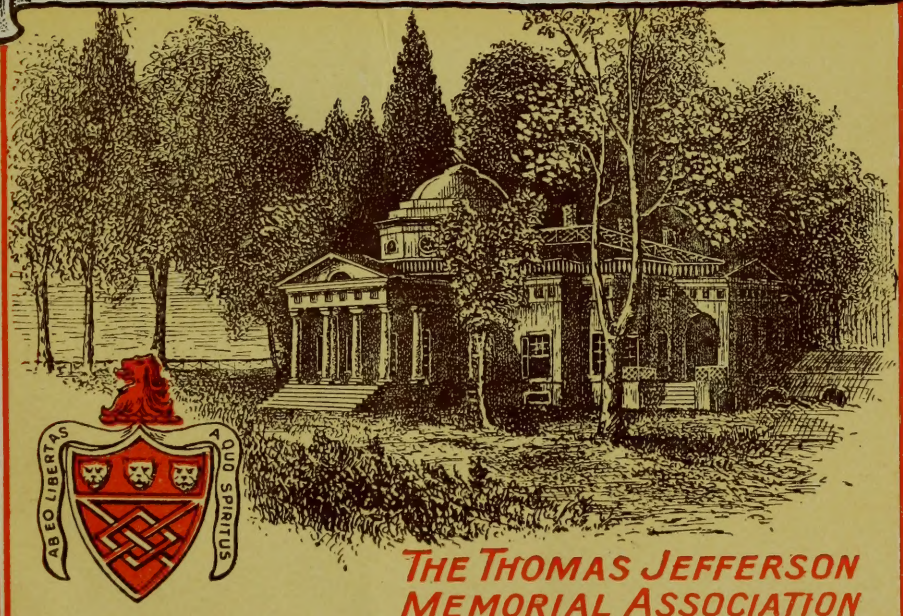
# The Writings of Thomas Jefferson

THE THOMAS JEFFERSON
MEMORIAL ASSOCIATION



Definitive Edition

# The Writings of Thomas Jefferson



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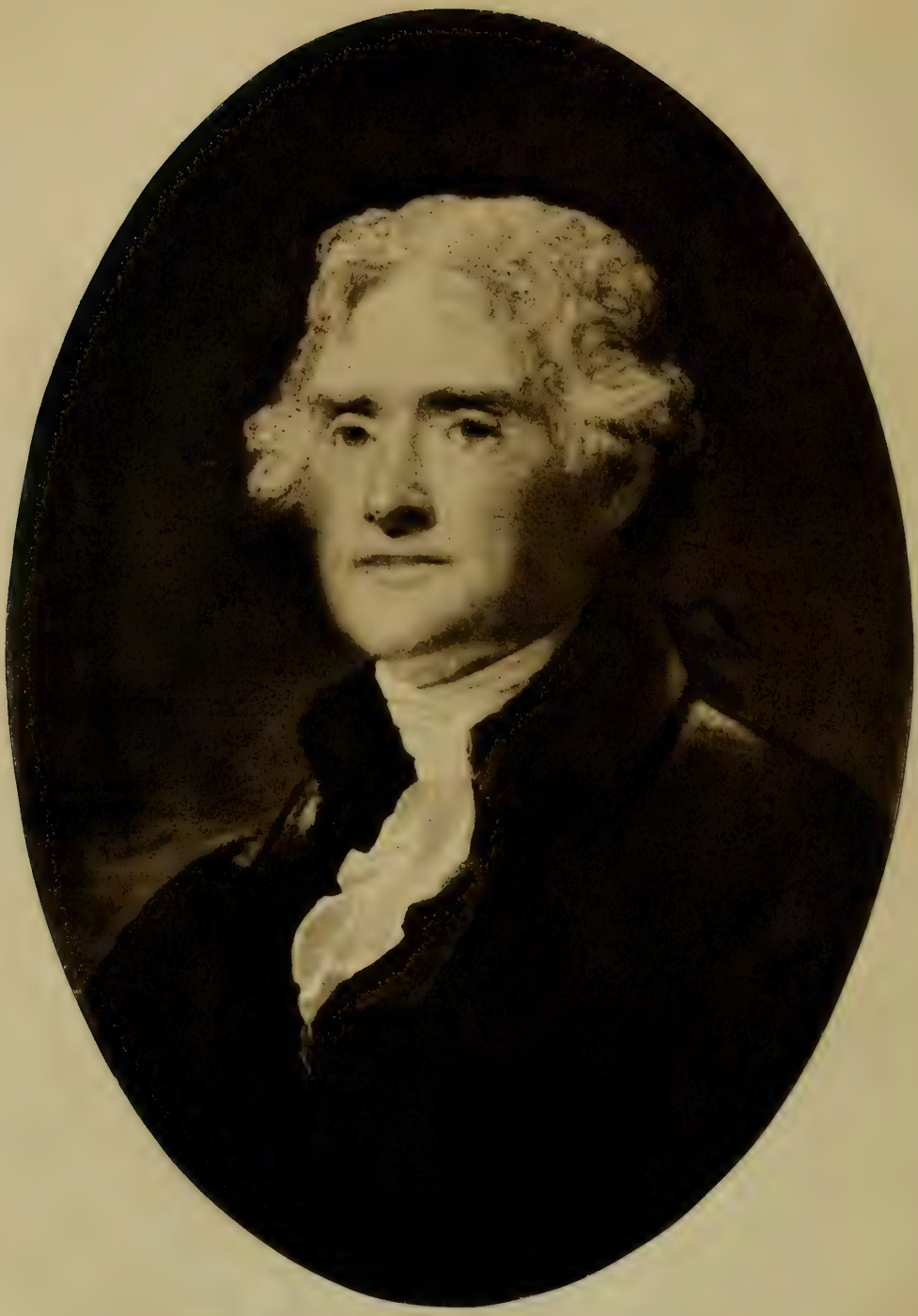

Th. Jefferson

Thomas Jefferson

(1743–1826)

Photogravure from the Original Painting by Gilbert Stuart at Bowdoin College

Thomas Jefferson

(1743–1826)

Photogravure from the Original Painting by Gilbert Stuart at Bowdoin College

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# THE WRITINGS OF
# THOMAS JEFFERSON

## Definitive Edition

CONTAINING HIS

AUTOBIOGRAPHY, NOTES ON VIRGINIA, PARLIAMENTARY MANUAL, OFFICIAL PAPERS, MESSAGES AND ADDRESSES, AND OTHER WRITINGS, OFFICIAL AND PRIVATE, NOW COLLECTED AND

*PUBLISHED IN THEIR ENTIRETY FOR THE FIRST TIME*

INCLUDING

ALL OF THE ORIGINAL MANUSCRIPTS, DEPOSITED IN THE DEPARTMENT OF STATE AND PUBLISHED IN 1853 BY ORDER OF THE JOINT COMMITTEE OF CONGRESS

WITH NUMEROUS ILLUSTRATIONS

AND

*A COMPREHENSIVE ANALYTICAL INDEX*

ALBERT ELLERY BERGH
EDITOR

14631

*VOL. I.*

ISSUED UNDER THE AUSPICES OF
THE THOMAS JEFFERSON MEMORIAL ASSOCIATION
OF THE UNITED STATES
WASHINGTON, D. C.
1907

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laws. Observe that I say spiritual laws, not spiritual truths merely, not formulæ to be assented to, but rules of life to be governed by and acted upon.

It was due to Jefferson that our fathers laid deep the foundation of the State in the moral law. They first set to mankind the great example, and exhibited the mighty spectacle—the sublimest spectacle in the universe—of a great and free people voluntarily governing itself by a law higher than its own desire.

The doctrine of the Declaration was by no means new or original. Much of it is to be found in the prose writings of Milton. More than a hundred years before Milton said: "No man who knows aught, can be so stupid as to deny that all men were naturally born free; born to command and not to obey. They agreed by common league to bind each other from mutual injury and jointly to defend themselves against any that gave disturbance or opposition to such agreement. Hence came cities, towns and commonwealths. This authority and power being originally and naturally in every one of them, and unitedly in them all, they communicated and derived to one or more than one. The first was called a king; the others magistrates. Not to be their Lords and Masters, but to be their deputies and commissioners. It follows that since the king or magistrate holds his authority of the people, for their good in the first place, and not his own, then may the people as oft as they shall judge it for the best either choose him or reject him, retain him or depose him.

though no tyrant, merely by the liberty and right of free-born men to be governed as seems to them best.

"That governors are not lightly to be changed is true with respect to the people's prudence, not to be the king's right.

"Nature teaches us to bear with oppression so long as there is a necessity for so doing.

"What the people may lawfully do against a tyrant no man of clear judgment need go further to be guided than by the very principles of nature in man."

Jefferson's Declaration ended by the declaration that, as our British brethren had been deaf to the voice of justice and consanguinity, we must acquiesce in the necessity that denounces our separation, and hold them as we hold the rest of mankind, enemies in war; in peace, friends.

Milton thus ends his lofty affirmation:

"He therefore that keeps peace with me near or remote, of whatever nation, is to me as far as all civil and human offices an Englishman and a neighbor, but if an Englishman forgetting all laws, human, civil and religious, offend against life and liberty, to him offended and to the law in his behalf, he is not better than a Turk, a Saracen, a heathen."

If we are to trust abundant tradition, indeed if we are to take Jefferson's evidence, found in the correspondence where he poured out his heart to his intimate friends, he was by no means free from the faults common to his time—common to humanity in all time. He was no hypocrite. He made no

pretense to be a saint. He liked political power and popularity. He had a natural and honorable aspiration for the affection and good will of his countrymen. He probably would not have said of himself as Washington did, that he never said of a man what he would not say to him. But more than any other statesman down to his time—more than any other statesman I can think of—save Lincoln alone—he had a steadfast and abiding faith in justice, righteousness and liberty as the prevailing and abiding forces in the conduct of States, and that justice and righteousness were sure to prevail where any people bear rule in perfect liberty. He accepted this doctrine with an unhesitating confidence. He never failed to proclaim it on all occasions. For it he was ready to encounter unpopularity, poverty, if need be, imprisonment and exile. Upon it, as on a cornerstone, he laid the foundation of the Republic.

He was sometimes charged with dissimulation in the conduct of ordinary politics. I think it will be found, on thorough investigation, that that notion took its rise from the sweet and kindly courtesy, and the affectionate nature which liked to be on good terms with every human being. But however that might be, he never failed to utter his opinion where freedom and justice were concerned whoever might be hurt or whoever might be angered. In the midst of slaveholding Virginia he was wont to speak of the cause of the abolition of slavery as "the sacred side" and to say that he looked to the young for its accomplishment.

So far as appears, he took little pride in anything else that he accomplished in his long life, great as were his other services to his country. He was Secretary of State. He was Governor of Virginia. He was Minister to France. He was Vice-President. He was President. He acquired Louisiana. Yet, when he gave direction for his own epitaph, he cared to have none of these things remembered. The simple inscription on his tomb at Monticello sums up in his language as no other orator can, the character and career of Thomas Jefferson.

"Here was buried Thomas Jefferson, author of the Declaration of American Independence, of the Statute of Virginia for religious freedom, and father of the University of Virginia."

Political freedom, religious freedom, and the education that makes these possible and safe were the ends for which he strove, the monuments by which he desired to be remembered. Neither power, nor honor, nor office, nor popularity, nor fame entered into the mighty heart or stirred that mighty soul.

I remember in my youth that a brilliant writer undertook with some success to caricature Daniel Webster, although it was a rather audacious attempt. He represents Mr. Webster as saying: "The common opinion in the eastern hemisphere is so and so—I differ from this eastern hemisphere." That was not so unreasonable a thing for Daniel Webster to say. But if Thomas Jefferson had said it it would occur to no man that it was either extrava-

gant or presumptuous. Thomas Jefferson was one of those men who can differ from hemispheres, from generations, from administrations and from centuries with the perfect assurance that on any question of liberty and righteousness, if the opinion of Thomas Jefferson stand on one side and the opinion of mankind on the other, the world will, in the end, come around to his way of thinking.

The American people, favored beyond any other in many things, is favored especially in its great anniversaries. There is no other nation that celebrates such things as we do. There is no other nation that has such things to celebrate. The landing of the Pilgrims; the Fourth of July; the Nineteenth of April; the Birthday of Washington; the Birthday of Lincoln; the Birthday of Jefferson, and, I hope hereafter, the founding of the Northwest and the Louisiana Treaty—these are not only great events in the history of our own people, but they are great events in the history of liberty. I have named eight. Six of them are already established holidays, either by law, or in a habit of the people powerful as law. Three of those—one of them perhaps the foremost and most generally observed of all—belong not only to the history of the country and of universal liberty, but to the life of Thomas Jefferson.

Geo F Hoar

how completely the two have changed hands as to the principle upon which they were originally supposed to be divided. The Democracy of to-day hold the liberty of one man to be absolutely nothing, when in conflict with another man's right of property; Republicans, on the contrary, are for both the man and the dollar, but in case of conflict the man before the dollar.

I remember being very much amused at seeing two partially intoxicated men engaged in a fight with their great-coats on, which fight, after a long and rather harmless contest, ended in each having fought himself out of his own coat and into that of the other. If the two leading parties of this day are really identical with the two in the days of Jefferson and Adams they have performed the same feat as the two drunken men.

But soberly, it is now no child's play to save the principles of Jefferson from total overthrow in this nation. One would state with great confidence that he could convince any sane child that the simpler propositions of Euclid are true, but nevertheless he would fail, utterly, with one who should deny the definitions and axioms.

The principles of Jefferson are the definitions and axioms of free society and yet they are denied and evaded, with no small show of success. One dashingly calls them "glittering generalities." Another bluntly calls them "self-evident lies" and others insidiously argue that they apply to "superior

races." These expressions, differing in form, are identical in object and effect—the supplanting the principles of free government, and restoring those of classification, caste, and legitimacy. They would delight a convocation of crowned heads plotting against the people. They are the vanguard, the miners and sappers of returning despotism. We must repulse them, or they will subjugate us. This is a world of compensation; and he who would be no slave must consent to have no slave. Those who deny freedom to others deserve it not for themselves, and, under a just God, cannot long retain it. *All honor to Jefferson—to the man, who in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecaste, and sagacity to introduce into a merely revolutionary document an abstract truth, applicable to all men and all times, and so embalm it there that to-day and in all coming days it shall be a rebuke and a stumbling-block to the very harbingers of reappearing tyranny and oppression.*

Your obedient servant,

A. LINCOLN.

Rotunda of the University of Virginia

Photogravure from a Photograph

Rotunda of the University of Virginia

Photogravure from a Photograph

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# AUTOBIOGRAPHY.

# JEFFERSON'S WORKS.

## AUTOBIOGRAPHY, WITH APPENDIX.

JANUARY 6, 1821. At the age of 77, I begin to make some memoranda, and state some recollections of dates and facts concerning myself, for my own more ready reference, and for the information of my family.

The tradition in my father's family was, that their ancestor came to this country from Wales, and from near the mountain of Snowdon, the highest in Great Britain. I noted once a case from Wales, in the law reports, where a person of our name was either plaintiff or defendant; and one of the same name was secretary to the Virginia Company. These are the only instances in which I have met with the name in that country. I have found it in our early records; but the first particular information I have of any ancestor was of my grandfather, who lived at the place in Chesterfield called Ozborne's, and owned the lands afterwards the glebe of the parish. He had three sons; Thomas who died young, Field who settled on the waters of Roanoke and left numerous descendants, and Peter, my father, who settled on

the lands I still own, called Shadwell, adjoining my present residence. He was born February 29, 1707–8, and intermarried 1739, with Jane Randolph, of the age of 19, daughter of Isham Randolph, one of the seven sons of that name and family, settled at Dungeoness in Goochland. They trace their pedigree far back in England and Scotland, to which let every one ascribe the faith and merit he chooses.

My father's education had been quite neglected; but being of a strong mind, sound judgment, and eager after information, he read much and improved himself, insomuch that he was chosen, with Joshua Fry, Professor of Mathematics in William and Mary college, to continue the boundary line between Virginia and North Carolina, which had been begun by Colonel Byrd; and was afterwards employed with the same Mr. Fry, to make the first map of Virginia which had ever been made, that of Captain Smith being merely a conjectural sketch. They possessed excellent materials for so much of the country as is below the Blue Ridge; little being then known beyond that ridge. He was the third or fourth settler, about the year 1737, of the part of the country in which I live. He died, August 17th, 1757, leaving my mother a widow, who lived till 1776, with six daughters and two sons, myself the elder. To my younger brother he left his estate on James River, called Snowdon, after the supposed birth-place of the family: to myself, the lands on which I was born and live.

He placed me at the English school at five years of age; and at the Latin at nine, where I continued until his death. My teacher, Mr. Douglas, a clergyman from Scotland, with the rudiments of the Latin and Greek languages, taught me the French; and on the death of my father, I went to the Reverend Mr. Maury, a correct classical scholar, with whom I continued two years; and then, to wit, in the spring of 1760, went to William and Mary college, where I continued two years. It was my great good fortune, and what probably fixed the destinies of my life, that Dr. William Small of Scotland, was then Professor of Mathematics, a man profound in most of the useful branches of science, with a happy talent of communication, correct and gentlemanly manners, and an enlarged and liberal mind. He, most happily for me, became soon attached to me, and made me his daily companion when not engaged in the school; and from his conversation I got my first views of the expansion of science, and of the system of things in which we are placed. Fortunately, the philosophical chair became vacant soon after my arrival at college, and he was appointed to fill it *per interim:* and he was the first who ever gave, in that college, regular lectures in Ethics, Rhetoric and Belles Lettres. He returned to Europe in 1762, having previously filled up the measure of his goodness to me, by procuring for me, from his most intimate friend, George Wythe, a reception as a student of law, under his direction, and introduced

me to the acquaintance and familiar table of Governor Fauquier, the ablest man who had ever filled that office. With him, and at his table, Dr. Small and Mr. Wythe, his *amici omnium horarum*, and myself, formed a *partie quarrée*, and to the habitual conversations on these occasions I owed much instruction. Mr. Wythe continued to be my faithful and beloved mentor in youth, and my most affectionate friend through life. In 1767, he led me into the practice of the law at the bar of the General court, at which I continued until the Revolution shut up the courts of justice.[1]

In 1769, I became a member of the legislature by the choice of the county in which I live, and so continued until it was closed by the Revolution. I made one effort in that body for the permission of the emancipation of slaves, which was rejected: and indeed, during the regal government, nothing liberal could expect success. Our minds were circumscribed within narrow limits, by an habitual belief that it was our duty to be subordinate to the mother country in all matters of government, to direct all our labors in subservience to her interests, and even to observe a bigoted intolerance for all religions but hers. The difficulties with our representatives were of habit and despair, not of reflection and conviction. Experience soon proved that they could bring their minds to rights, on the first summons of their attention. But the King's Council, which acted as another house

[1 See Appendix, note A.]

of legislature, held their places at will, and were in most humble obedience to that will: the Governor too, who had a negative on our laws, held by the same tenure, and with still greater devotedness to it: and, last of all, the Royal negative closed the last door to every hope of amelioration.

On the 1st of January, 1772, I was married to Martha Skelton, widow of Bathurst Skelton, and daughter of John Wayles, then twenty-three years old. Mr. Wayles was a lawyer of much practice, to which he was introduced more by his great industry, punctuality, and practical readiness, than by eminence in the science of his profession. He was a most agreeable companion, full of pleasantry and good humor, and welcomed in every society. He acquired a handsome fortune, and died in May, 1773, leaving three daughters: the portion which came on that event to Mrs. Jefferson, after the debts should be paid, which were very considerable, was about equal to my own patrimony, and consequently doubled the ease of our circumstances.

When the famous Resolutions of 1765, against the Stamp-act, were proposed, I was yet a student of law in Williamsburg. I attended the debate, however, at the door of the lobby of the House of Burgesses, and heard the splendid display of Mr. Henry's talents as a popular orator. They were great indeed; such as I have never heard from any other man. He appeared to me to speak as Homer wrote. Mr. Johnson, a lawyer, and member from

the Northern Neck, seconded the resolutions, and by him the learning and the logic of the case were chiefly maintained. My recollections of these transactions may be seen page 60 of the life of Patrick Henry, by Wirt, to whom I furnished them.

In May, 1769, a meeting of the General Assembly was called by the Governor, Lord Botetourt. I had then become a member; and to that meeting became known the joint resolutions and address of the Lords and Commons, of 1768–9, on the proceedings in Massachusetts. Counter-resolutions, and an address to the King by the House of Burgesses, were agreed to with little opposition, and a spirit manifestly displayed itself of considering the cause of Massachusetts as a common one. The Governor dissolved us: but we met the next day in the Apollo[1] of the Raleigh tavern, formed ourselves into a voluntary convention, drew up articles of association against the use of any merchandise imported from Great Britain, signed and recommended them to the people, repaired to our several counties, and were re-elected without any other exception than of the very few who had declined assent to our proceedings.

Nothing of particular excitement occurring for a considerable time, our countrymen seemed to fall into a state of insensibility to our situation; the duty on tea, not yet repealed, and the declaratory act of a right in the British Parliament to bind us

[1 The name of a public room in the Raleigh.]

by their laws in all cases whatsoever, still suspended over us. But a court of inquiry held in Rhode Island in 1762, with a power to send persons to England to be tried for offences committed here, was considered, at our session of the spring of 1773, as demanding attention. Not thinking our old and leading members up to the point of forwardness and zeal which the times required, Mr. Henry, Richard Henry Lee, Francis L. Lee, Mr. Carr and myself agreed to meet in the evening, in a private room of the Raleigh, to consult on the state of things. There may have been a member or two more whom I do not recollect. We were all sensible that the most urgent of all measures was that of coming to an understanding with all the other colonies, to consider the British claims as a common cause to all, and to produce a unity of action: and, for this purpose, that a committee of correspondence in each colony would be the best instrument for intercommunication: and that their first measure would probably be, to propose a meeting of deputies from every colony, at some central place, who should be charged with the direction of the measures which should be taken by all. We, therefore, drew up the resolutions which may be seen in Wirt, page 87. The consulting members proposed to me to move them, but I urged that it should be done by Mr. Carr, my friend and brother-in-law, then a new member, to whom I wished an opportunity should be given of making known to the house his great

worth and talents. It was so agreed; he moved them, they were agreed to *nem. con.*, and a committee of correspondence appointed, of whom Peyton Randolph, the speaker, was chairman. The Governor (then Lord Dunmore) dissolved us, but the committee met the next day, prepared a circular letter to the speakers of the other colonies, inclosing to each a copy of the resolutions, and left it in charge with their chairman to forward them by expresses.

The origination of these committees of correspondence between the colonies has been since claimed for Massachusetts, and Marshall[1] has given into this error, although the very note of his appendix to which he refers, shows that their establishment was confined to their own towns. This matter will be seen clearly stated in a letter of Samuel Adams Wells to me of April 2nd, 1819, and my answer of May 12th. I was corrected by the letter of Mr. Wells in the information I had given Mr. Wirt, as stated in his note, page 87, that the messengers of Massachusetts and Virginia crossed each other on the way, bearing similar propositions; for Mr. Wells shows that Massachusetts did not adopt the measure, but on the receipt of our proposition, delivered at their next session. Their message, therefore, which passed ours, must have related to something else, for I well remember Peyton Randolph's informing me of the crossing of our messengers.[2]

[1] Life of Washington, vol. ii., p. 151.

[2] See Appendix, note B.

The next event which excited our sympathies for Massachusetts, was the Boston port bill, by which that port was to be shut up on the 1st of June, 1774. This arrived while we were in session in the spring of that year. The lead in the House, on these subjects, being no longer left to the old members, Mr. Henry, R. H. Lee, Fr. L. Lee, three or four other members, whom I do not recollect, and myself, agreeing that we must boldly take an unequivocal stand in the line with Massachusetts, determined to meet and consult on the proper measures, in the council-chamber, for the benefit of the library in that room. We were under conviction of the necessity of arousing our people from the lethargy into which they had fallen, as to passing events; and thought that the appointment of a day of general fasting and prayer would be most likely to call up and alarm their attention. No example of such a solemnity had existed since the days of our distresses in the war of '55, since which a new generation had grown up. With the help, therefore, of Rushworth, whom we rummaged over for the revolutionary precedents and forms of the Puritans of that day, preserved by him, we cooked up a resolution, somewhat modernizing their phrases, for appointing the 1st day of June, on which the port-bill was to commence, for a day of fasting, humiliation, and prayer, to implore Heaven to avert from us the evils of civil war, to inspire us with firmness in support of our rights, and to turn the hearts of

the King and Parliament to moderation and justice. To give greater emphasis to our proposition, we agreed to wait the next morning on Mr. Nicholas, whose grave and religious character was more in unison with the tone of our resolution, and to solicit him to move it. We accordingly went to him in the morning. He moved it the same day; the 1st of June was proposed; and it passed without opposition. The Governor dissolved us, as usual. We retired to the Apollo, as before, agreed to an association, and instructed the committee of correspondence to propose to the corresponding committees of the other colonies, to appoint deputies to meet in Congress at such place, *annually*, as should be convenient, to direct, from time to time, the measures required by the general interest: and we declared that an attack on any one colony, should be considered as an attack on the whole. This was in May. We further recommended to the several counties to elect deputies to meet at Williamsburg, the 1st of August ensuing, to consider the state of the colony, and particularly to appoint delegates to a general Congress, should that measure be acceded to by the committees of correspondence generally. It was acceded to; Philadelphia was appointed for the place, and the 5th of September for the time of meeting. We returned home, and in our several counties invited the clergy to meet assemblies of the people on the 1st of June, to perform the ceremonies of the day, and to address

to them discourses suited to the occasion. The people met generally, with anxiety and alarm in their countenances, and the effect of the day, through the whole colony, was like a shock of electricity, arousing every man, and placing him erect and solidly on his centre. They chose, universally, delegates for the convention. Being elected one for my own county, I prepared a draught of instructions to be given to the delegates whom we should send to the Congress, which I meant to propose at our meeting.[1] In this I took the ground that, from the beginning, I had thought the only one orthodox or tenable, which was, that the relation between Great Britain and these colonies was exactly the same as that of England and Scotland, after the accession of James, and until the union, and the same as her present relations with Hanover, having the same executive chief, but no other necessary political connection; and that our emigration from England to this country gave her no more rights over us, than the emigrations of the Danes and Saxons gave to the present authorities of the mother country, over England. In this doctrine, however, I had never been able to get any one to agree with me but Mr. Wythe. He concurred in it from the first dawn of the question, What was the political relation between us and England? Our other patriots, Randolph, the Lees, Nicholas, Pendleton, stopped at the half-way house of John

[1 See Appendix, note C.]

Dickinson, who admitted that England had a right to regulate our commerce, and to lay duties on it for the purposes of regulation, but not of raising revenue. But for this ground there was no foundation in compact, in any acknowledged principles of colonization, nor in reason: expatriation being a natural right, and acted on as such, by all nations, in all ages. I set out for Williamsburg some days before that appointed for our meeting, but was taken ill of a dysentery on the road, and was unable to proceed. I sent on, therefore, to Williamsburg, two copies of my draught, the one under cover to Peyton Randolph, who I knew would be in the chair of the convention, the other to Patrick Henry. Whether Mr. Henry disapproved the ground taken, or was too lazy to read it (for he was the laziest man in reading I ever knew) I never learned: but he communicated it to nobody. Peyton Randolph informed the convention he had received such a paper from a member, prevented by sickness from offering it in his place, and he laid it on the table for perusal. It was read generally by the members, approved by many, though thought too bold for the present state of things; but they printed it in pamphlet form, under the title of "A Summary View of the Rights of British America." It found its way to England, was taken up by the opposition, interpolated a little by Mr. Burke so as to make it answer opposition purposes, and in that form ran rapidly through several editions. This information

I had from Parson Hurt, who happened at the time to be in London, whither he had gone to receive clerical orders; and I was informed afterwards by Peyton Randolph, that it had procured me the honor of having my name inserted in a long list of proscriptions, enrolled in a bill of attainder commenced in one of the Houses of Parliament, but suppressed in embryo by the hasty step of events, which warned them to be a little cautious. Montague, agent of the House of Burgesses in England, made extracts from the bill, copied the names, and sent them to Peyton Randolph. The names, I think, were about twenty, which he repeated to me, but I recollect those only of Hancock, the two Adamses, Peyton Randolph himself, Patrick Henry, and myself.[1] The convention met on the 1st of August, renewed their association, appointed delegates to the Congress, gave them instructions very temperately and properly expressed, both as to style and matter;[2] and they repaired to Philadelphia at the time appointed. The splendid proceedings of that Congress, at their first session, belong to general history, are known to every one, and need not therefore be noted here. They terminated their session on the 26th of October, to meet again on the 10th of May ensuing. The convention, at their ensuing session of March, '75, approved of the proceedings of Congress, thanked

[1] See Girardin's History of Virginia, Appendix No. 12. note.

[2] See Appendix, note D.]

their delegates, and reappointed the same persons to represent the colony at the meeting to be held in May: and foreseeing the probability that Peyton Randolph, their president, and speaker also of the House of Burgesses, might be called off, they added me, in that event, to the delegation.

Mr. Randolph was, according to expectation, obliged to leave the chair of Congress, to attend the General Assembly summoned by Lord Dunmore, to meet on the 1st day of June, 1775. Lord North's conciliatory propositions, as they were called, had been received by the Governor, and furnished the subject for which this assembly was convened. Mr. Randolph accordingly attended, and the tenor of these propositions being generally known, as having been addressed to all the governors, he was anxious that the answer of our Assembly, likely to be the first, should harmonize with what he knew to be the sentiments and wishes of the body he had recently left. He feared that Mr. Nicholas, whose mind was not yet up to the mark of the times, would undertake the answer, and therefore pressed me to prepare it. I did so, and, with his aid, carried it through the House, with long and doubtful scruples from Mr. Nicholas and James Mercer, and a dash of cold water on it here and there, enfeebling it somewhat, but finally with unanimity, or a vote approaching it. This being passed, I repaired immediately to Philadelphia, and conveyed to Congress the first notice they had of it. It was entirely

approved there. I took my seat with them on the 21st of June. On the 24th, a committee which had been appointed to prepare a declaration of the causes of taking up arms, brought in their report (drawn I believe by J. Rutledge) which, not being liked, the House recommitted it, on the 26th, and added Mr. Dickinson and myself to the committee. On the rising of the House, the committee having not yet met, I happened to find myself near Governor W. Livingston, and proposed to him to draw the paper. He excused himself and proposed that I should draw it. On my pressing him with urgency, "we are as yet but new acquaintances, sir," said he, "why are you so earnest for my doing it?" "Because," said I, "I have been informed that you drew the Address to the people of Great Britain, a production, certainly, of the finest pen in America." "On that," says he, "perhaps, sir, you may not have been correctly informed." I had received the information in Virginia from Colonel Harrison on his return from that Congress. Lee, Livingston, and Jay had been the committee for that draught. The first, prepared by Lee, had been disapproved and recommitted. The second was drawn by Jay, but being presented by Governor Livingston, had led Colonel Harrison into the error. The next morning, walking in the hall of Congress, many members being assembled, but the House not yet formed, I observed Mr. Jay speaking to R. H. Lee, and leading him by the button of his coat to me. "I

understand, sir," said he to me, "that this gentleman informed you, that Governor Livingston drew the Address to the people of Great Britain." I assured him, at once, that I had not received that information from Mr. Lee, and that not a word had ever passed on the subject between Mr. Lee and myself; and after some explanations the subject was dropped. These gentlemen had had some sparrings in debate before, and continued ever very hostile to each other.

I prepared a draught of the declaration committed to us. It was too strong for Mr. Dickinson. He still retained the hope of reconciliation with the mother country, and was unwilling it should be lessened by offensive statements. He was so honest a man, and so able a one, that he was greatly indulged even by those who could not feel his scruples. We therefore requested him to take the paper, and put it into a form he could approve. He did so, preparing an entire new statement, and preserving of the former only the last four paragraphs and half of the preceding one. We approved and reported it to Congress, who accepted it. Congress gave a signal proof of their indulgence to Mr. Dickinson, and of their great desire not to go too fast for any respectable part of our body, in permitting him to draw their second petition to the King according to his own ideas, and passing it with scarcely any amendment. The disgust against this humility was general; and Mr. Dickinson's delight

at its passage was the only circumstance which reconciled them to it. The vote being passed, although further observation on it was out of order, he could not refrain from rising and expressing his satisfaction, and concluded by saying, "there is but one word, Mr. President, in the paper which I disapprove, and that is the word *Congress;*" on which Ben Harrison rose and said, "There is but one word in the paper, Mr. President, of which I approve, and that is the word *Congress.*"

On the 22d of July, Dr. Franklin, Mr. Adams, R. H. Lee, and myself, were appointed a committee to consider and report on Lord North's conciliatory resolution. The answer of the Virginia Assembly on that subject having been approved, I was requested by the committee to prepare this report, which will account for the similarity of feature in the two instruments.

On the 15th of May, 1776, the convention of Virginia instructed their delegates in Congress, to propose to that body to declare the colonies independent of Great Britain, and appointed a committee to prepare a declaration of rights and plan of government.

[1]In Congress, Friday, June 7, 1776. The dele-

[1 Here, in the original manuscript, commence the "two preceding sheets" referred to by Mr. Jefferson, page 26, as containing "notes" taken by him "whilst these things were going on." They are easily distinguished from the body of the MS. in which they were inserted by him, being of a paper very different in size, quality and color, from that in which the latter is written.]

gates from Virginia moved, in obedience to instructions from their constituents, that the Congress should declare that these United colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; that measures should be immediately taken for procuring the assistance of foreign powers, and a Confederation be formed to bind the colonies more closely together.

The House being obliged to attend at that time to some other business, the proposition was referred to the next day, when the members were ordered to attend punctually at ten o'clock.

Saturday, June 8. They proceeded to take it into consideration, and referred it to a committee of the whole, into which they immediately resolved themselves, and passed that day and Monday, the 10th, in debating on the subject.

It was argued by Wilson, Robert R. Livingston, E. Rutledge, Dickinson, and others—

That, though they were friends to the measures themselves, and saw the impossibility that we should ever again be united with Great Britain, yet they were against adopting them at this time:

That the conduct we had formerly observed was wise and proper now, of deferring to take any capital step till the voice of the people drove us into it:

That they were our power, and without them our declarations could not be carried into effect:

That the people of the middle colonies (Maryland, Delaware, Pennsylvania, the Jerseys and New York) were not yet ripe for bidding adieu to British connection, but that they were fast ripening, and, in a short time, would join in the general voice of America:

That the resolution, entered into by this House on the 15th of May, for suppressing the exercise of all powers derived from the crown, had shown, by the ferment into which it had thrown these middle colonies, that they had not yet accommodated their minds to a separation from the mother country:

That some of them had expressly forbidden their delegates to consent to such a declaration, and others had given no instructions, and consequently no powers to give such consent:

That if the delegates of any particular colony had no power to declare such colony independent, certain they were, the others could not declare it for them; the colonies being as yet perfectly independent of each other:

That the assembly of Pennsylvania was now sitting above stairs, their convention would sit within a few days, the convention of New York was now sitting, and those of the Jerseys and Delaware counties would meet on the Monday following, and it was probable these bodies would

take up the question of Independence, and would declare to their delegates the voice of their state:

That if such a declaration should now be agreed to, these delegates must retire, and possibly their colonies might secede from the Union:

That such a secession would weaken us more than could be compensated by any foreign alliance:

That in the event of such a division, foreign powers would either refuse to join themselves to our fortunes, or, having us so much in their power as that desperate declaration would place us, they would insist on terms proportionably more hard and prejudicial:

That we had little reason to expect an alliance with those to whom alone, as yet, we had cast our eyes:

That France and Spain had reason to be jealous of that rising power, which would one day certainly strip them of all their American possessions:

That it was more likely they should form a connection with the British court, who, if they should find themselves unable otherwise to extricate themselves from their difficulties, would agree to a partition of our territories, restoring Canada to France, and the Floridas to Spain, to accomplish for themselves a recovery of these colonies:

That it would not be long before we should receive certain information of the disposition of the French court, from the agent whom we had sent to Paris for that purpose:

That if this disposition should be favorable, by waiting the event of the present campaign, which we all hoped would be successful, we should have reason to expect an alliance on better terms:

That this would in fact work no delay of any effectual aid from such ally, as, from the advance of the season and distance of our situation, it was impossible we could receive any assistance during this campaign:

That it was prudent to fix among ourselves the terms on which we should form alliance, before we declared we would form one at all events:

And that if these were agreed on, and our Declaration of Independence ready by the time our Ambassador should be prepared to sail, it would be as well as to go into that Declaration at this day.

On the other side, it was urged by J. Adams, Lee, Wythe, and others, that no gentleman had argued against the policy or the right of separation from Britain, nor had supposed it possible we should ever renew our connection; that they had only opposed its being now declared:

That the question was not whether, by a Declaration of Independence, we should make ourselves what we are not; but whether we should declare a fact which already exists:

That, as to the people or parliament of England, we had always been independent of them, their restraints on our trade deriving efficacy from our acquiescence only, and not from any rights they

possessed of imposing them, and that so far, our connection had been federal only, and was now dissolved by the commencement of hostilities:

That, as to the King, we had been bound to him by allegiance, but that this bond was now dissolved by his assent to the last act of Parliament, by which he declares us out of his protection, and by his levying war on us, a fact which had long ago proved us out of his protection; it being a certain position in law, that allegiance and protection are reciprocal, the one ceasing when the other is withdrawn:

That James the Second never declared the people of England out of his protection, yet his actions proved it, and the Parliament declared it:

No delegates then can be denied, or ever want, a power of declaring an existing truth:

That the delegates from the Delaware counties having declared their constituents ready to join, there are only two colonies, Pennsylvania and Maryland, whose delegates are absolutely tied up, and that these had, by their instructions, only reserved a right of confirming or rejecting the measure:

That the instructions from Pennsylvania might be accounted for from the times in which they were drawn, near a twelvemonth ago, since which the face of affairs has totally changed:

That within that time, it had become apparent that Britain was determined to accept nothing less than a *carte-blanche*, and that the King's answer to

the Lord Mayor, Aldermen and Common Council of London, which had come to hand four days ago, must have satisfied every one of this point:

That the people wait for us to lead the way:

That *they* are in favor of the measure, though the instructions given by some of their *representatives* are not:

That the voice of the representatives is not always consonant with the voice of the people, and that this is remarkably the case in these middle colonies:

That the effect of the resolution of the 15th of May has proved this, which, raising the murmurs of some in the colonies of Pennsylvania and Maryland, called forth the opposing voice of the freer part of the people, and proved them to be the majority even in these colonies:

That the backwardness of these two colonies might be ascribed, partly to the influence of proprietary power and connections, and partly, to their having not yet been attacked by the enemy:

That these causes were not likely to be soon removed, as there seemed no probability that the enemy would make either of these the seat of this summer's war:

That it would be vain to wait either weeks or months for perfect unanimity, since it was impossible that all men should ever become of one sentiment on any question:

That the conduct of some colonies, from the beginning of this contest, had given reason to

suspect it was their settled policy to keep in the rear of the confederacy, that their particular prospect might be better, even in the worst event:

That, therefore, it was necessary for those colonies who had thrown themselves forward and hazarded all from the beginning, to come forward now also, and put all again to their own hazard:

That the history of the Dutch Revolution, of whom three states only confederated at first, proved that a secession of some colonies would not be so dangerous as some apprehended:

That a Declaration of Independence alone could render it consistent with European delicacy, for European powers to treat with us, or even to receive an Ambassador from us:

That till this, they would not receive our vessels into their ports, nor acknowledge the adjudications of our courts of admirality to be legitimate, in cases of capture of British vessels:

That though France and Spain may be jealous of our rising power, they must think it will be much more formidable with the addition of Great Britain; and will therefore see it their interest to prevent a coalition; but should they refuse, we shall be but where we are; whereas without trying, we shall never know whether they will aid us or not:

That the present campaign may be unsuccessful, and therefore we had better propose an alliance while our affairs wear a hopeful aspect:

That to wait the event of this campaign will

certainly work delay, because, during the summer, France may assist us effectually, by cutting off those supplies of provisions from England and Ireland, on which the enemy's armies here are to depend; or by setting in motion the great power they have collected in the West Indies, and calling our enemy to the defence of the possessions they have there:

That it would be idle to lose time in settling the terms of alliance, till we had first determined we would enter into alliance:

That it is necessary to lose no time in opening a trade for our people, who will want clothes, and will want money too, for the payment of taxes:

And that the only misfortune is, that we did not enter into alliance with France six months sooner, as, besides opening her ports for the vent of our last year's produce, she might have marched an army into Germany, and prevented the petty princes there, from selling their unhappy subjects to subdue us.

It appearing in the course of these debates, that the colonies of New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina were not yet matured for falling from the parent stem, but that they were fast advancing to that state, it was thought most prudent to wait a while for them, and to postpone the final decision to July 1st; but, that this might occasion as little delay as possible, a committee was appointed to

prepare a Declaration of Independence. The committee were John Adams, Dr. Franklin, Roger Sherman, Robert R. Livingston, and myself. Committees were also appointed, at the same time, to prepare a plan of confederation for the colonies, and to state the terms proper to be proposed for foreign alliance. The committee for drawing the Declaration of Independence, desired me to do it. It was accordingly done, and being approved by them, I reported it to the House on Friday, the 28th of June, when it was read, and ordered to lie on the table. On Monday, the 1st of July, the House resolved itself into a committee of the whole, and resumed the consideration of the original motion made by the delegates of Virginia, which, being again debated through the day, was carried in the affirmative by the votes of New Hampshire, Connecticut, Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, North Carolina and Georgia. South Carolina and Pennsylvania voted against it. Delaware had but two members present, and they were divided. The delegates from New York declared they were for it themselves, and were assured their constituents were for it; but that their instructions having been drawn near a twelvemonth before, when reconciliation was still the general object, they were enjoined by them to do nothing which should impede that object. They, therefore, thought themselves not justifiable in voting on either side, and asked leave to withdraw

from the question; which was given them. The committee rose and reported their resolution to the House. Mr. Edward Rutledge, of South Carolina, then requested the determination might be put off to the next day, as he believed his colleagues, though they disapproved of the resolution, would then join in it for the sake of unanimity. The ultimate question, whether the House would agree to the resolution of the committee, was accordingly postponed to the next day, when it was again moved, and South Carolina concurred in voting for it. In the meantime, a third member had come post from the Delaware counties, and turned the vote of that colony in favor of the resolution. Members of a different sentiment attending that morning from Pennsylvania also, her vote was changed, so that the whole twelve colonies who were authorized to vote at all, gave their voices for it; and, within a few days,[1] the convention of New York approved of it, and thus supplied the void occasioned by the withdrawing of her delegates from the vote.

Congress proceeded the same day to consider the Declaration of Independence, which had been reported and lain on the table the Friday preceding, and on Monday referred to a committee of the whole. The pusillanimous idea that we had friends in England worth keeping terms with, still haunted the minds of many. For this reason, those passages which conveyed censures on the people of England

[1] July 9.

were struck out, lest they should give them offence. The clause too, reprobating the enslaving the inhabitants of Africa, was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our northern brethren also, I believe, felt a little tender under those censures; for though their people had very few slaves themselves, yet they had been pretty considerable carriers of them to others. The debates, having taken up the greater parts of the 2d, 3d, and 4th days of July, were, on the evening of the last, closed; the Declaration was reported by the committee, agreed to by the House, and signed by every member present, except Mr. Dickinson. As the sentiments of men are known not only by what they receive, but what they reject also, I will state the form of the Declaration as originally reported. The parts struck out by Congress shall be distinguished by a black line drawn under them;[1] and those inserted by them shall be placed in the margin, or in a concurrent column.

A Declaration by the Representatives of the United States of America, in *General* Congress assembled.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected

[1 In this publication, the parts struck out are printed in *Italics* and inclosed in brackets.]

# Draft of the Declaration of Independence

Fac-simile of Jefferson's Rough Draft. Photo-engraving from the Original Document in the Department of State

Draft of the Declaration of Independence

Fac-simile of Jefferson's Rough Draft. Photo-engraving from the Original Document in the Department of State.

he has affected to render the military independent of & superior to the civil power:

he has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknoleged by our laws; giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us;

for protecting them by a mock-trial from punishment for any murders which they should commit on the inhabitants of these states;

for cutting off our trade with all parts of the world;

for imposing taxes on us without our consent;

for depriving us in many cases of the benefits of trial by jury;

for transporting us beyond seas to be tried for pretended offences

for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and enlarging its boundaries so as to render it at once an example & fit instrument for introducing the same absolute rule into these colonies [states]

A Declaration. by the Representatives of the UNITED STATES OF AMERICA, in General Congress assembled.

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth the separate and equal station to which the laws of nature & of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights that among these are life, liberty & the pursuit of happiness, that to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, & to institute new government, laying it's foundation on such principles & organising it's powers in such form, as to them shall seem most likely to effect their safety & happiness prudence indeed will dictate that governments long established should not be changed for light & transient causes: and accordingly all experience hath shewn that mankind are more disposed to suffer while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed but when a long train of abuses & usurpations, [begun at a distinguished period, & pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right it is their duty to throw off such government & to provide new guards for their future security such has been the patient sufferance of these colonies, & such is now the necessity which constrains them to alter [expunge] their former systems of government. The history of the present king of Great Britain is a history of [unremitting] injuries and usurpations, [among which, appears no solitary fact but all having in direct object the establishment of an absolute tyranny over these states to prove this let facts be submitted to a candid world. [for the truth of which we pledge a faith yet unsullied by falsehood]

he has refused his assent to laws the most wholesome and necessary for the pub
lic good
he has forbidden his governors to pass laws of immediate & pressing importance,
unless suspended in their operation till his assent should be obtained,
and when so suspended, he has utterly neglected ~~attended~~ to attend to them
he has refused to pass other laws for the accomodation of large districts of people
unless those people would relinquish the right of representation in the Legislature, a right
inestimable to them & formidable to tyrants only
he has called together legislative bodies at places unusual uncomfortable & distant from
the depository of their public records for the sole purpose of fatiguing them into compliance
with his measures.
he has dissolved Representative houses repeatedly [& continually] for opposing with
manly firmness his invasions on the rights of the people
~~[illegible]~~, he has refused for a long time after such dissolutions, to cause others to be elected * Mr Adams
whereby the legislative powers incapable of annihilation, have returned to
the people at large for their exercise the state remaining in the mean time
exposed to all the dangers of invasion from without & convulsions within
he has endeavored to prevent the population of these states, for that purpose
obstructing the laws for naturalization of foreigners, refusing to pass others
to encourage their migrations hither, & raising the conditions of new ap-
propriations of lands
he has [obstructed] the administration of justice [totally] to cease in some of these
~~states~~ [refusing] his assent to laws for establishing judiciary powers.
he has made [our] judges dependant on his will alone, for the tenure of their offices
and the † & payment amount of their salaries † for Franklin
he has erected a multitude of new offices [by a self-assumed power,] & sent hi-
ther swarms of officers to harrass our people & eat out their substance
he has kept among us in times of peace, standing armies [& ships of war,] without the consent of our legislatures
he has affected to render the military independent of & superior to the civil power
he has combined with others to subject us to a jurisdiction foreign to our constitu-
tions and unacknoleged by our laws, giving his assent to their acts of pretended
~~of~~ legislation, for quartering large bodies of armed troops among us,
for protecting them by a mock trial from punishment for any murders
which they should commit on the inhabitants of these states,
for cutting off our trade with all parts of the world,
for imposing taxes on us without our consent;
for depriving us of the benefits of trial by jury;
for transporting us beyond seas to be tried for pretenceled offences
for abolishing the free system of English laws in a neighbouring province, establishing therein an arbitrary government
and enlarging its boundaries so as to render it at once an example & fit instrument for introducing the same absolute
rule into these colonies

+ Dr Franklin

[abolishing our most ~~important~~ valuable laws

for taking away our charters, & altering fundamentally the forms of our governments,

for suspending our own legislatures & declaring themselves invested with power to

legislate for us in all cases whatsoever:

he has abdicated government here, [by declaring us out of his protection & waging war against us

withdrawing his governors, & declaring us out

of his allegiance & protection]

he has plundered our seas, ravaged our coasts burnt our towns & destroyed the

lives of our people.

he is at this time transporting large armies of Scotch and other foreign mercenaries to compleat

the works of death desolation & tyranny already begun with circumstances

of cruelty & perfidy scarcely paralleled in the most barbarous ages and totally unworthy the head of a civilized nation

he has endeavored to bring on the inhabitants of our frontiers the merciless Indian

savages, whose known rule of warfare is an undistinguished destruction of

all ages, sexes, & conditions [of existence.]

[he has incited treasonable insurrections of our fellow citizens, with the

allurements of forfeiture & confiscation of our property

he has waged cruel war against human nature itself, violating it's most sa

cred rights of life & liberty in the persons of a distant people who never of

fended him, captivating & carrying them into slavery in another hemis

sphere or to incur miserable death in their transportation thither this

piratical warfare, the opprobrium of infidel powers, is the warfare of the

Christian king of Great Britain determined to keep open a market

where MEN should be bought & sold. he has prostituted his negative

for suppressing every legislative attempt to prohibit or to restrain this

~~determining to keep open a market where MEN should be bought & sold~~

execrable commerce, and that this assemblage of horrors might want no fact

of distinguished die, he is now exciting those very people to rise in arms

amongst and to purchase that liberty of which he has deprived them,

by murdering the people upon whom he also obtruded them. thus paying

off former crimes committed against the liberties of one people with crimes

which he urges them to commit against the lives of another]

in every stage of these oppressions we have petitioned for redress in the most humble

terms our repeated petitions have been answered only by repeated injuries. a prince

whose character is thus marked by every act which may define a tyrant, is unfit

to be the ruler of a free people [who mean to be free future ages will scarce believe

that the hardiness of one man adventured within the short compass of twelve years

only, to ~~by~~ build a foundation so broad & undisguised, for tyranny

over a people fostered & fixed in principles

of ~~liberty~~ freedom]

of our common kindred to disavow these usurpations which [were likely to] interrupt our connection & correspondence ~~& connection~~. they too have been deaf to the voice of justice & of consanguinity, [& when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our harmony, they have by their free election re-established them in power. at this very time too they

We must therefore

& all others who may hereafter claim by, through, or under them; we utterly dissolve & ~~break off~~ all political connection which may ~~have~~ heretofore have subsisted between us & the people or parliament of Great Britain; and finally we do assert and declare these colonies to be free and independant states and that as free & independant states they ~~shall hereafter~~ have full power to levy war conclude peace, contract alliances, establish commerce, & to do all other acts and things which independant states may of right do And for the support of this declaration] we mutually pledge to each other our lives, our fortunes, & our sacred honour.

Nor have we been wanting in attentions to our British brethren we have warned them from time to time of attempts by their legislature to extend a jurisdiction over [these our states] we have reminded them of the circumstances of our emigration & settlement here [no one of which could warrant so strange a pretension that these were effected at the expence of our own blood & treasure unassisted by the wealth or the strength of Great Britain that in constituting indeed our several forms of government we had adopted one common king, thereby laying a foundation for perpetual league & amity with them but that submission to their parliament was no part of our constitution nor ever in idea if history may be credited and] we appealed to their native justice & magnanimity [as well as to] the ties of our common kindred to disavow these usurpations which were likely to interrupt our connection & correspondence ~~& connection~~ they too have been deaf to the voice of justice & of consanguinity [& when occasions have been given them by the regular course of their laws, of removing from their councils the disturbers of our harmony they have by their free election re-established them in power at this very time too they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch & foreign mercenaries to invade & destroy us ~~[illegible]~~ these facts have given the last stab to agonizing affection, and manly spirit bids us to renounce for ever these unfeeling brethren we must endeavor to forget our former love for them, and to hold them as we hold the rest of mankind enemies in war, in peace friends we might have been a free & a great people together, but a communication of grandeur & of freedom it seems is below their dignity be it so since they will have it the road to ~~glory &~~ happiness & to glory is open to us too we will ~~[illegible]~~ tread it ~~[illegible]~~ and] acquiesce in the necessity which ~~pro~~ denounces our ~~[illegible]~~ ~~[illegible]~~ ~~[eternal]~~ separation and hold them as [illegible] in peace friends

We therefore the representatives of the United States of America in General Congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do in the name & by authority of the good people of these [states] colonies [reject and renounce all allegiance & subjection to the kings of Great Britain & all others who may hereafter claim by through or under them, we utterly dissolve ~~& break off~~ all political connection which may ~~have~~ heretofore have subsisted between us & the people or parliament of Great Britain, and finally we do assert and declare these colonies to be free and independant states and that as free & independant states they ~~shall [illegible]~~ have full power to levy war conclude peace contract alliances, establish commerce, & to do all other acts and things which independant states may of right do And for the support of this declaration [we mutually pledge to each other our lives, our fortunes, & our sacred honour

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them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self evident: that all men are created equal; that they are endowed by their Creator with [*inherent and*] inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are

certain

accustomed. But when a long train of abuses and usurpations, [*begun at a distinguished period and*] pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to [*expunge*] their former systems of government. The history of the present king of Great Britain is a history of [*unremitting*] injuries and usurpations, [*among which appears no solitary fact to contradict the uniform tenor of the rest, but all have*] in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world [*for the truth of which we pledge a faith yet unsullied by falsehood.*]

alter

repeated

all having

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly [*and continually*] for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

obstructed by He has [*suffered*] the administration of justice [*totally to cease in some of these states*] refusing his assent to laws for establishing judiciary powers.

He has made [*our*] judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, [*by a self-assumed power*] and sent hither swarms of new officers to harass our people and eat out their substance.

He has kept among us in times of peace standing armies [*and ships of war*] without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws, giving his assent to their acts of pretended legislation for quartering large bodies of armed troops among us; for protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these states; for cutting off our trade with all parts of the world; for imposing taxes on us without our consent; for depriving us [ ] of the benefits

in many cases

of trial by jury; for transporting us beyond seas to be tried for pretended offences; for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these [*states*]; for taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments; for suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

colonies

He has abdicated government here [*withdrawing his governors, and declaring us out of his allegiance and protection.*]

by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny already begun with circumstances of cruelty and perfidy [ ] unworthy the head of a civilized nation.

scarcely paralleled in the most barbarous ages, and totally

He has constrained our fellow citizens taken captive on the high seas, to bear arms against their country, to become the

executioners of their friends and brethren, or to fall themselves by their hands.

excited domestic insurrection among us, and has

He has [ ] endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions [*of existence*].

[*He has incited treasonable insurrections of our fellow citizens, with the allurements of forfeiture and confiscation of our property.*

*He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobium of* INFIDEL *powers, is the warfare of the* CHRISTIAN *king of Great Britain. Determined to keep open a market where* MEN *should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he also obtruded them: thus paying*

*off former crimes committed against the* LIBERTIES *of one people, with crimes which he urges them to commit against the* LIVES *of another.*]

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injuries.

A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a [ ] people [*who mean to be free. Future ages will scarcely believe that the hardiness of one man adventured, within the short compass of twelve years only, to lay a foundation so broad and so undisguised for tyranny over a people fostered and fixed in principles of freedom*]. free

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend [*a*] jurisdiction over [*these our states*]. We have reminded them of the circumstances of our emigration and settlement here, [*no one of which could warrant so strange a pretension: that these were effected at the expense of our own blood and treasure, unassisted by the wealth or the strength of Great Britain: that in constituting indeed our several forms of government, we had adopted one common king,* an unwarrantable us

*thereby laying a foundation for perpetual league and amity with them: but that submission to their parliament was no part of our constitution, nor ever in idea, if history may be credited: and,*] we [ ] appealed to their native justice and magnanimity [*as well as to*] the ties of our common kindred to disavow these usurpations which [*were likely to*] interrupt our connection and correspondence. They too have been deaf to the voice of justice and of consanguinity, [*and when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our harmony, they have, by their free election, re-established them in power. At this very time too, they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch and foreign mercenaries to invade and destroy us. These facts have given the last stab to agonizing affection, and manly spirit bids us to renounce forever these unfeeling brethren. We must endeavor to forget our former love for them, and hold them as we hold the rest of mankind, enemies in war, in peace friends. We might have been a free and a great people together; but a communication of grandeur and of freedom, it seems, is below their dignity. Be it so, since they will have it. The road to happi-*

have

and we have conjured them by

would inevitably

*ness and to glory is open to us, too. We will tread it apart from them, and*] acquiesce in the necessity which denounces our [*eternal*] separation [ ]!

We must therefore and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We therefore the representatives of the United States of America in General Congress assembled, do in the name, and by the authority of the good people of these [*states reject and renounce all allegiance and subjection to the kings of Great Britain and all others who may hereafter claim by, through or under them; we utterly dissolve all political connection which may heretofore have subsisted between us and the people or parliament of Great Britain: and finally we do assert and declare these colonies to be free and independent states,*] and that as free and independent states,

We, therefore, the representatives of the United States of America in General Congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that as free

they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.

And for the support of this declaration, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.

And for the support of this declaration, with a firm reliance on the protection of divine providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The Declaration thus signed on the 4th, on paper, was engrossed on parchment, and signed again on the 2d of August.

[Some erroneous statements of the proceedings on the Declaration of Independence having got before the public in latter times, Mr. Samuel A. Wells asked explanations of me, which are given in my letter to him of May 12, '19, before and now again referred to.[1] I took notes in my place while these things were going on, and at their close wrote them out in form and with correctness, and from 1 to 7 of the two preceding sheets, are the originals then written; as

[1 See Appendix, note B.]

## The Jefferson Desk

Desk on which Jefferson wrote the Declaration of Independence. Photo-engraving from the Original Desk in the Department of State

The Jefferson Desk

Desk on which Jefferson wrote the Declaration of Independence. Photo-
engraving from the Original Desk in the Department of State

# The Jefferson Desk Memorandum

Fac-simile of Memorandum, in Jefferson's handwriting, pasted on the back of Desk on which Jefferson wrote the Declaration of Independence.
Photo-engraving from the Original Memorandum

The Jefferson Desk Memorandum

Fac-simile of Memorandum, in Jefferson's handwriting, pasted on the back of
Desk on which Jefferson wrote the Declaration of Independence.
Photo-engraving from the Original Memorandum

Th: Jefferson gives this writing desk to Joseph Coolidge Junr. as a memorial of affection. it was made from a drawing of his own, by Ben Randall, cabinet maker of Philadelphia, with whom he first lodged on his arrival in that city in may 1776. and is the identical one on which he wrote the Declaration of Independance.

Politics, as well as Religion, has it's superstitions. these, gaining strength with time, may, one day, give imaginary value to this relic, for it's association with the birth of the Great charter of our Independance.

Monticello. Nov. 18. 1825.

the two following are of the earlier debates on the Confederation, which I took in like manner.[1]]

On Friday, July 12, the committee appointed to draw the articles of Confederation reported them, and, on the 22d, the House resolved themselves into a committee to take them into consideration. On the 30th and 31st of that month, and 1st of the ensuing, those articles were debated which determined the proportion, or quota, of money which each state should furnish to the common treasury, and the manner of voting in Congress. The first of these articles was expressed in the original draught in these words. "Art. XI. All charges of war and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States assembled, shall be defrayed out of a common treasury, which shall be supplied by the several colonies in proportion to the number of inhabitants of every age, sex, and quality, except Indians not paying taxes, in each colony, a true account of which, distinguishing the white inhabitants, shall be triennially taken and transmitted to the Assembly of the United States."

Mr. Chase moved that the quotas should be fixed, not by the number of inhabitants of every condition,

[1 The above note of the author is on a slip of paper, pasted in at the end of the Declaration. Here is also sewed into the MS. a slip of newspaper containing, under the head "Declaration of Independence," a letter from Thomas M'Kean, to Messrs. William M'Corkle & Son, dated "Philadelphia, June 16, 1817." This letter is to be found in the Port Folio, Sept. 1817, p. 249.]

but by that of the "white inhabitants." He admitted that taxation should be always in proportion to property, that this was, in theory, the true rule; but that, from a variety of difficulties, it was a rule which could never be adopted in practice. The value of the property in every State, could never be estimated justly and equally. Some other measure for the wealth of the State must therefore be devised, some standard referred to, which would be more simple. He considered the number of inhabitants as a tolerably good criterion of property, and that this might always be obtained. He therefore thought it the best mode which we could adopt, with one exception only: he observed that negroes are property, and as such, cannot be distinguished from the lands or personalities held in those States where there are few slaves; that the surplus of profit which a Northern farmer is able to lay by, he invests in cattle, horses, &c., whereas a Southern farmer lays out the same surplus in slaves. There is no more reason, therefore, for taxing the Southern States on the farmer's head, and on his slave's head, than the Northern ones on their farmer's heads and the heads of their cattle; that the method proposed would, therefore, tax the Southern States according to their numbers and their wealth conjunctly, while the Northern would be taxed on numbers only: that negroes, in fact, should not be considered as members of the State, more than cattle, and that they have no more interest in it.

Mr. John Adams observed, that the numbers of people were taken by this article, as an index of the wealth of the State, and not as subjects of taxation; that, as to this matter, it was of no consequence by what name you called your people, whether by that of freemen or of slaves; that in some countries the laboring poor were called freemen, in others they were called slaves; but that the difference as to the state was imaginary only. What matters it whether a landlord, employing ten laborers on his farm, gives them annually as much money as will buy them the necessaries of life, or gives them those necessaries at short hand? The ten laborers add as much wealth annually to the State, increase its exports as much in the one case as the other. Certainly five hundred freemen produce no more profits, no greater surplus for the payment of taxes, than five hundred slaves. Therefore, the State in which are the laborers called freemen, should be taxed no more than that in which are those called slaves. Suppose, by an extraordinary operation of nature or of law, one-half the laborers of a State could in the course of one night be transformed into slaves; would the State be made the poorer or the less able to pay taxes? That the condition of the laboring poor in most countries, that of the fishermen particularly of the Northern States, is as abject as that of slaves. It is the number of laborers which produces the surplus for taxation, and numbers, therefore, indiscriminately, are the fair index of wealth; that it is

the use of the word "property" here, and its application to some of the people of the State, which produces the fallacy. How does the Southern farmer procure slaves? Either by importation or by purchase from his neighbor. If he imports a slave, he adds one to the number of laborers in his country, and proportionably to its profits and abilities to pay taxes; if he buys from his neighbor, it is only a transfer of a laborer from one farm to another, which does not change the annual produce of the State, and therefore, should not change its tax: that if a Northern farmer works ten laborers on his farm, he can, it is true, invest the surplus of ten men's labor in cattle; but so may the Southern farmer, working ten slaves; that a State of one hundred thousand freemen can maintain no more cattle, than one of one hundred thousand slaves. Therefore, they have no more of that kind of property; that a slave may indeed, from the custom of speech, be more properly called the wealth of his master, than the free laborer might be called the wealth of his employer; but as to the State, both were equally its wealth, and should, therefore, equally add to the quota of its tax.

Mr. Harrison proposed, as a compromise, that two slaves should be counted as one freeman. He affirmed that slaves did not do as much work as freemen, and doubted if two effected more than one; that this was proved by the price of labor; the hire of a laborer in the Southern colonies being from

£8 to £12, while in the Northern it was generally £24.

Mr. Wilson said, that if this amendment should take place, the Southern colonies would have all the benefit of slaves, whilst the Northern ones would bear the burthen: that slaves increase the profits of a State, which the Southern States mean to take to themselves; that they also increase the burthen of defence, which would of course fall so much the heavier on the Northern: that slaves occupy the places of freemen, and eat their food. Dismiss your slaves, and freemen will take their places. It is our duty to lay every discouragement on the importation of slaves; but this amendment would give the *jus trium liberorum* to him who would import slaves: that other kinds of property were pretty equally distributed through all the colonies: there were as many cattle, horses and sheep, in the North as the South, and South as the North; but not so as to slaves: that experience has shown that those colonies have been always able to pay most, which have the most inhabitants, whether they be black or white; and the practice of the Southern colonies has always been to make every farmer pay poll taxes upon all his laborers, whether they be black or white. He acknowledges, indeed, that freemen work the most; but they consume the most also. They do not produce a greater surplus for taxation. The slave is neither fed nor clothed so expensively as a freeman. Again, white women are exempted from labor gen-

erally, but negro women are not. In this, then, the Southern States have an advantage as the article now stands. It has sometimes been said, that slavery is necessary, because the commodities they raise would be too dear for market if cultivated by freemen; but now it is said that the labor of the slave is the dearest.

Mr. Payne urged the original resolution of Congress, to proportion the quotas of the States to the number of souls.

Dr. Witherspoon was of opinion, that the value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation. This is the true barometer of wealth. The one now proposed is imperfect in itself, and unequal between the States. It has been objected that negroes eat the food of freemen, and, therefore, should be taxed; horses also eat the food of freemen; therefore they also should be taxed. It has been said too, that in carrying slaves into the estimate of the taxes the State is to pay, we do no more than those States themselves do, who always take slaves into the estimate of the taxes the individual is to pay. But the cases are not parallel. In the Southern colonies slaves pervade the whole colony; but they do not pervade the whole continent. That as to the original resolution of Congress, to proportion the quotas according to the souls, it was temporary only, and related to the moneys heretofore emitted; whereas we are now entering into

a new compact, and therefore stand on original ground.

August 1. The question being put, the amendment proposed was rejected by the votes of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, against those of Delaware, Maryland, Virginia, North and South Carolina. Georgia was divided.

The other article was in these words. "Art. XVII. In determining questions, each colony shall have one vote."

July 30, 31, August 1. Present forty-one members. Mr. Chase observed this article was the most likely to divide us, of any one proposed in the draught then under consideration: that the larger colonies had threatened they would not confederate at all, if their weight in Congress should not be equal to the numbers of people they added to the confederacy; while the smaller ones declared against a union, if they did not retain an equal vote for the protection of their rights. That it was of the utmost consequence to bring the parties together, as, should we sever from each other, either no foreign power will ally with us at all, or the different States will form different alliances, and thus increase the horrors of those scenes of civil war and bloodshed, which in such a state of separation and independence, would render us a miserable people. That our importance, our interests, our peace required that we should confederate, and that mutual sacrifices should be made

to effect a compromise of this difficult question. He was of opinion, the smaller colonies would lose their rights, if they were not in some instances allowed an equal vote; and, therefore, that a discrimination should take place among the questions which would come before Congress. That the smaller States should be secured in all questions concerning life or liberty, and the greater ones, in all respecting property. He, therefore, proposed, that in votes relating to money, the voice of each colony should be proportioned to the number of its inhabitants.

Dr. Franklin thought, that the votes should be so proportioned in all cases. He took notice that the Delaware counties had bound up their delegates to disagree to this article. He thought it a very extraordinary language to be held by any State, that they would not confederate with us, unless we would let them dispose of our money. Certainly, if we vote equally, we ought to pay equally; but the smaller States will hardly purchase the privilege at this price. That had he lived in a State where the representation, originally equal, had become unequal by time and accident, he might have submitted rather than disturb government; but that we should be very wrong to set out in this practice, when it is in our power to establish what is right. That at the time of the Union between England and Scotland, the latter had made the objection which the smaller States now do; but experience had proved

that no unfairness had ever been shown them: that their advocates had prognosticated that it would again happen, as in times of old, that the whale would swallow Jonas, but he thought the prediction reversed in event, and that Jonas had swallowed the whale; for the Scotch had in fact got possession of the government, and gave laws to the English. He reprobated the original agreement of Congress to vote by colonies, and, therefore, was for their voting, in all cases, according to the number of taxables.

Dr. Witherspoon opposed every alteration of the article. All men admit that a confederacy is necessary. Should the idea get abroad that there is likely to be no union among us, it will damp the minds of the people, diminish the glory of our struggle, and lessen its importance; because it will open to our view future prospects of war and dissension among ourselves. If an equal vote be refused, the smaller States will become vassals to the larger; and all experience has shown that the vassals and subjects of free States are the most enslaved. He instanced the Helots of Sparta, and the provinces of Rome. He observed that foreign powers, discovering this blemish, would make it a handle for disengaging the smaller States from so unequal a confederacy. That the colonies should in fact be considered as individuals; and that, as such, in all disputes, they should have an equal vote; that they are now collected as individuals making a

bargain with each other, and, of course, had a right to vote as individuals. That in the East India Company they voted by persons, and not by their proportion of stock. That the Belgic confederacy voted by provinces. That in questions of war the smaller States were as much interested as the larger, and, therefore, should vote equally; and indeed, that the larger States were more likely to bring war on the confederacy, in proportion as their frontier was more extensive. He admitted that equality of representation was an excellent principle, but then it must be of things which are co-ordinate; that is, of things similar, and of the same nature: that nothing relating to individuals could ever come before Congress; nothing but what would respect colonies. He distinguished between an incorporating and a federal union. The union of England was an incorporating one; yet Scotland had suffered by that union; for that its inhabitants were drawn from it by the hopes of places and employments: nor was it an instance of equality of representation; because, while Scotland was allowed nearly a thirteenth of representation, they were to pay only one-fortieth of the land tax. He expressed his hopes, that in the present enlightened state of men's minds, we might expect a lasting confederacy, if it was founded on fair principles.

John Adams advocated the voting in proportion to numbers. He said that we stand here as the representatives of the people: that in some States

the people are many, in others they are few; that therefore, their vote here should be proportioned to the numbers from whom it comes. Reason, justice and equity never had weight enough on the face of the earth, to govern the councils of men. It is interest alone which does it, and it is interest alone which can be trusted: that therefore the interests within doors, should be the mathematical representatives of the interests without doors: that the individuality of the colonies is a mere sound. Does the individuality of a colony increase its wealth or numbers? If it does, pay equally. If it does not add weight in the scale of the confederacy, it cannot add to their rights, nor weigh in argument. A. has £50, B. £500, C. £1000 in partnership. Is it just they should equally dispose of the moneys of the partnership? It has been said, we are independent individuals making a bargain together. The question is not what we are now, but what we ought to be when our bargain shall be made. The confederacy is to make us one individual only; it is to form us like separate parcels of metal, into one common mass. We shall no longer retain our separate individuality, but become a single individual as to all questions submitted to the confederacy. Therefore, all those reasons, which prove the justice and expediency of equal representation in other assemblies, hold good here. It has been objected that a proportional vote will endanger the smaller States. We answer that an equal vote will endanger

the larger. Virginia, Pennsylvania, and Massachusetts, are the three greater colonies. Consider their distance, their difference of produce, of interests, and of manners, and it is apparent they can never have an interest or inclination to combine for the oppression of the smaller: that the smaller will naturally divide on all questions with the larger. Rhode Island, from its relation, similarity and intercourse, will generally pursue the same objects with Massachusetts; Jersey, Delaware, and Maryland, with Pennsylvania.

Dr. Rush took notice, that the decay of the liberties of the Dutch republic proceeded from three causes. 1. The perfect unanimity requisite on all occasions. 2. Their obligation to consult their constituents. 3. Their voting by provinces. This last destroyed the equality of representation, and the liberties of Great Britain also are sinking from the same defect. That a part of our rights is deposited in the hands of our legislatures. There, it was admitted, there should be an equality of representation. Another part of our rights is deposited in the hands of Congress: why is it not equally necessary there should be an equal representation there? Were it possible to collect the whole body of the people together, they would determine the questions submitted to them by their majority. Why should not the same majority decide when voting here, by their representatives? The larger colonies are so providentially divided in situation, as to

render every fear of their combining visionary. Their interests are different, and their circumstances dissimilar. It is more probable they will become rivals, and leave it in the power of the smaller States to give preponderance to any scale they please. The voting by the number of free inhabitants, will have one excellent effect, that of inducing the colonies to discourage slavery, and to encourage the increase of their free inhabitants.

Mr. Hopkins observed, there were four larger, four smaller, and four middle-sized colonies. That the four largest would contain more than half the inhabitants of the confederated States, and therefore, would govern the others as they should please. That history affords no instance of such a thing as equal representation. The Germanic body votes by States. The Helvetic body does the same; and so does the Belgic confederacy. That too little is known of the ancient confederations, to say what was their practice.

Mr. Wilson thought, that taxation should be in proportion to wealth, but that representation should accord with the number of freemen. That government is a collection or result of the wills of all: that if any government could speak the will of all, it would be perfect; and that, so far as it departs from this, it becomes imperfect. It has been said that Congress is a representation of States, not of individuals. I say, that the objects of its care are all the individuals of the States. It is strange that

annexing the name of "State" to ten thousand men, should give them an equal right with forty thousand. This must be the effect of magic, not of reason. As to those matters which are referred to Congress, we are not so many States; we are one large State. We lay aside our individuality, whenever we come here. The Germanic body is a burlesque on government; and their practice, on any point, is a sufficient authority and proof that it is wrong. The greatest imperfection in the constitution of the Belgic confederacy is their voting by provinces. The interest of the whole is constantly sacrificed to that of the small States. The history of the war in the reign of Queen Anne sufficiently proves this. It is asked, shall nine colonies put it into the power of four to govern them as they please? I invert the question, and ask, shall two millions of people put it in the power of one million to govern them as they please? It is pretended, too, that the smaller colonies will be in danger from the greater. Speak in honest language and say, the minority will be in danger from the majority. And is there an assembly on earth, where this danger may not be equally pretended? The truth is, that our proceedings will then be consentaneous with the interests of the majority, and so they ought to be. The probability is much greater, that the larger States will disagree, than that they will combine. I defy the wit of man to invent a possible case, or to suggest any one thing on earth, which shall be for the interests of Virginia,

Pennsylvania and Massachusetts, and which will not also be for the interest of the other States.[1]

These articles, reported July 12, '76, were debated from day to day, and time to time, for two years, were ratified July 9, '78, by ten States, by New Jersey on the 26th of November of the same year, and by Delaware on the 23d of February following. Maryland alone held off two years more, acceding to them March 1, '81, and thus closing the obligation.

Our delegation had been renewed for the ensuing year, commencing August 11; but the new government was now organized, a meeting of the legislature was to be held in October, and I had been elected a member by my county. I knew that our legislation, under the regal government, had many very vicious points which urgently required reformation, and I thought I could be of more use in forwarding that work. I therefore retired from my seat in Congress on the 2d of September, resigned it, and took my place in the legislature of my State, on the 7th of October.

On the 11th, I moved for leave to bring in a bill for the establishment of courts of justice, the organization of which was of importance. I drew the bill; it was approved by the committee, reported and passed, after going through its due course.

On the 12th, I obtained leave to bring in a bill declaring tenants in tail to hold their lands in fee

[1 Here terminate the author's notes of the "earlier debates on the confederation," and recommences the MS. begun by him in 1821.]

simple. In the earlier times of the colony, when lands were to be obtained for little or nothing, some provident individuals procured large grants; and, desirous of founding great families for themselves, settled them on their descendants in fee tail. The transmission of this property from generation to generation, in the same name, raised up a distinct set of families, who, being privileged by law in the perpetuation of their wealth, were thus formed into a Patrician order, distinguished by the splendor and luxury of their establishments. From this order, too, the king habitually selected his counsellors of State; the hope of which distinction devoted the whole corps to the interests and will of the crown. To annul this privilege, and instead of an aristocracy of wealth, of more harm and danger, than benefit, to society, to make an opening for the aristocracy of virtue and talent, which nature has wisely provided for the direction of the interests of society, and scattered with equal hand through all its conditions, was deemed essential to a well-ordered republic.—To effect it, no violence was necessary, no deprivation of natural right, but rather an enlargement of it by a repeal of the law. For this would authorize the present holder to divide the property among his children equally, as his affections were divided; and would place them, by natural generation, on the level of their fellow citizens. But this repeal was strongly opposed by Mr. Pendleton, who was zealously attached to ancient establishments; and who,

taken all in all, was the ablest man in debate I have ever met with. He had not indeed the poetical fancy of Mr. Henry, his sublime imagination, his lofty and overwhelming diction; but he was cool, smooth and persuasive; his language flowing, chaste and embellished; his conceptions quick, acute and full of resource; never vanquished: for if he lost the main battle, he returned upon you, and regained so much of it as to make it a drawn one, by dexterous manœuvres, skirmishes in detail, and the recovery of small advantages which, little singly, were important all together. You never knew when you were clear of him, but were harassed by his perseverance, until the patience was worn down of all who had less of it than himself. Add to this, that he was one of the most virtuous and benevolent of men, the kindest friend, the most amiable and pleasant of companions, which ensured a favorable reception to whatever came from him. Finding that the general principle of entails could not be maintained, he took his stand on an amendment which he proposed, instead of an absolute abolition, to permit the tenant in tail to convey in fee simple, if he chose it; and he was within a few votes of saving so much of the old law. But the bill passed finally for entire abolition.

In that one of the bills for organizing our judiciary system, which proposed a court of Chancery, I had provided for a trial by jury of all matters of fact, in that as well as in the courts of law. He defeated

it by the introduction of four words only, "*if either party choose.*" The consequence has been, that as no suitor will say to his judge, "Sir, I distrust you, give me a jury," juries are rarely, I might say, perhaps, never, seen in that court, but when called for by the Chancellor of his own accord.

The first establishment in Virginia which became permanent, was made in 1607. I have found no mention of negroes in the colony until about 1650. The first brought here as slaves were by a Dutch ship; after which the English commenced the trade, and continued it until the revolutionary war. That suspended, *ipso facto*, their further importation for the present, and the business of the war pressing constantly on the legislature, this subject was not acted on finally until the year '78, when I brought in a bill to prevent their further importation. This passed without opposition, and stopped the increase of the evil by importation, leaving to future efforts its final eradication.

The first settlers of this colony were Englishmen, loyal subjects to their king and church, and the grant to Sir Walter Raleigh contained an express proviso that their laws "should not be against the true Christian faith, now professed in the church of England." As soon as the state of the colony admitted, it was divided into parishes, in each of which was established a minister of the Anglican church, endowed with a fixed salary, in tobacco, a glebe house and land with the other necessary

appendages. To meet these expenses, all the inhabitants of the parishes were assessed, whether they were or not, members of the established church. Towards Quakers who came here, they were most cruelly intolerant, driving them from the colony by the severest penalties. In process of time, however, other sectarisms were introduced, chiefly of the Presbyterian family; and the established clergy, secure for life in their glebes and salaries, adding to these, generally, the emoluments of a classical school, found employment enough, in their farms and schoolrooms, for the rest of the week, and devoted Sunday only to the edification of their flock, by service, and a sermon at their parish church. Their other pastoral functions were little attended to. Against this inactivity, the zeal and industry of sectarian preachers had an open and undisputed field; and by the time of the revolution, a majority of the inhabitants had become dissenters from the established church, but were still obliged to pay contributions to support the pastors of the minority. This unrighteous compulsion, to maintain teachers of what they deemed religious errors, was grievously felt during the regal government, and without a hope of relief. But the first republican legislature, which met in '76, was crowded with petitions to abolish this spiritual tyranny. These brought on the severest contests in which I have ever been engaged. Our great opponents were Mr. Pendleton and Robert Carter Nicholas; honest men, but zealous

churchmen. The petitions were referred to the committee of the whole house on the state of the country; and, after desperate contests in that committee, almost daily from the 11th of October to the 5th of December, we prevailed so far only, as to repeal the laws which rendered criminal the maintenance of any religious opinions, the forbearance of repairing to church, or the exercise of any mode of worship; and further, to exempt dissenters from contributions to the support of the established church; and to suspend, only until the next session, levies on the members of that church for the salaries of their own incumbents. For although the majority of our citizens were dissenters, as has been observed, a majority of the legislature were churchmen. Among these, however, were some reasonable and liberal men, who enabled us, on some points, to obtain feeble majorities. But our opponents carried, in the general resolutions of the committee of November 19, a declaration that religious assemblies ought to be regulated, and that provision ought to be made for continuing the succession of the clergy, and superintending their conduct. And, in the bill now passed, was inserted an express reservation of the question, Whether a general assessment should not be established by law, on every one, to the support of the pastor of his choice; or whether all should be left to voluntary contributions; and on this question, debated at every session, from '76 to '79, (some of our dissenting allies, having now secured their

particular object, going over to the advocates of a general assessment,) we could only obtain a suspension from session to session until '79, when the question against a general assessment was finally carried, and the establishment of the Anglican church entirely put down. In justice to the two honest but zealous opponents who have been named, I must add, that although, from their natural temperaments, they were more disposed generally to acquiesce in things as they are, than to risk innovations, yet whenever the public will had once decided, none were more faithful or exact in their obedience to it.

The seat of our government had originally been fixed in the peninsula of Jamestown, the first settlement of the colonists; and had been afterwards removed a few miles inland to Williamsburg. But this was at a time when our settlements had not extended beyond the tide waters. Now they had crossed the Alleghany; and the centre of population was very far removed from what it had been. Yet Williamsburg was still the depository of our archives, the habitual residence of the Governor and many other of the public functionaries, the established place for the sessions of the legislature, and the magazine of our military stores; and its situation was so exposed that it might be taken at any time in war, and, at this time particularly, an enemy might in the night run up either of the rivers, between which it lies, land a force above, and take possession of the place, without the possibility of

saving either persons or things. I had proposed its removal so early as October, '76; but it did not prevail until the session of May, '79.

Early in the session of May, '79, I prepared, and obtained leave to bring in a bill, declaring who should be deemed citizens, asserting the natural right of expatriation, and prescribing the mode of exercising it. This, when I withdrew from the House, on the 1st of June following, I left in the hands of George Mason, and it was passed on the 26th of that month.

In giving this account of the laws of which I was myself the mover and draughtsman, I, by no means, mean to claim to myself the merit of obtaining their passage. I had many occasional and strenuous coadjutors in debate, and one, most steadfast, able and zealous; who was himself a host. This was George Mason, a man of the first order of wisdom among those who acted on the theatre of the revolution, of expansive mind, profound judgment, cogent in argument, learned in the lore of our former constitution, and earnest for the republican change on democratic principles. His elocution was neither flowing nor smooth; but his language was strong, his manner most impressive, and strengthened by a dash of biting cynicism, when provocation made it seasonable.

Mr. Wythe, while speaker in the two sessions of 1777, between his return from Congress and his appointment to the Chancery, was an able and con-

stant associate in whatever was before a committee of the whole. His pure integrity, judgment and reasoning powers, gave him great weight. Of him, see more in some notes inclosed in my letter of August 31, 1821, to Mr. John Saunderson.[1]

Mr. Madison came into the House in 1776, a new member and young; which circumstances, concurring with his extreme modesty, prevented his venturing himself in debate before his removal to the Council of State, in November, '77. From thence he went to Congress, then consisting of few members. Trained in these successive schools, he acquired a habit of self-possession, which placed at ready command the rich resources of his luminous and discriminating mind, and of his extensive information, and rendered him the first of every assembly afterwards, of which he became a member. Never wandering from his subject into vain declamation, but pursuing it closely, in language pure, classical and copious, soothing always the feelings of his adversaries by civilities and softness of expression, he rose to the eminent station which he held in the great National Convention of 1787; and in that of Virginia which followed, he sustained the new constitution in all its parts, bearing off the palm against the logic of George Mason, and the fervid declamation of Mr. Henry. With these consummate powers, were united a pure and spotless virtue, which no calumny has ever attempted to sully. Of the powers

[1 See Appendix, note A.]

and polish of his pen, and of the wisdom of his administration in the highest office of the nation, I need say nothing. They have spoken, and will forever speak for themselves.

So far we were proceeding in the details of reformation only; selecting points of legislation, prominent in character and principle, urgent, and indicative of the strength of the general pulse of reformation. When I left Congress, in '76, it was in the persuasion that our whole code must be reviewed, adapted to our republican form of government; and, now that we had no negatives of Councils, Governors, and Kings to restrain us from doing right, it should be corrected, in all its parts, with a single eye to reason, and the good of those for whose government it was framed. Early, therefore, in the session of '76, to which I returned, I moved and presented a bill for the revision of the laws, which was passed on the 24th of October; and on the 5th of November, Mr. Pendleton, Mr. Wythe, George Mason, Thomas L. Lee, and myself, were appointed a committee to execute the work. We agreed to meet at Fredericksburg to settle the plan of operation, and to distribute the work. We met there accordingly, on the 13th of January, 1777. The first question was, whether we should propose to abolish the whole existing system of laws, and prepare a new and complete Institute, or preserve the general system, and only modify it to the present state of things. Mr. Pendleton, contrary to his usual disposition in

favor of ancient things, was for the former proposition, in which he was joined by Mr. Lee. To this it was objected, that to abrogate our whole system would be a bold measure, and probably far beyond the views of the legislature; that they had been in the practice of revising, from time to time, the laws of the colony, omitting the expired, the repealed, and the obsolete, amending only those retained, and probably meant we should now do the same, only including the British statutes as well as our own: that to compose a new Institute, like those of Justinian and Bracton, or that of Blackstone, which was the model proposed by Mr. Pendleton, would be an arduous undertaking, of vast research, of great consideration and judgment; and when reduced to a text, every word of that text, from the imperfection of human language, and its incompetence to express distinctly every shade of idea, would become a subject of question and chicanery, until settled by repeated adjudications; and this would involve us for ages in litigation, and render property uncertain, until, like the statutes of old, every word had been tried and settled by numerous decisions, and by new volumes of reports and commentaries; and that no one of us, probably, would undertake such a work, which to be systematical, must be the work of one hand. This last was the opinion of Mr. Wythe, Mr. Mason, and myself. When we proceeded to the distribution of the work, Mr. Mason excused himself, as, being no lawyer, he felt himself unqualified for

the work, and he resigned soon after. Mr. Lee excused himself on the same ground, and died, indeed, in a short time. The other two gentlemen, therefore, and myself divided the work among us. The common law and statutes to the 4 James I. (when our separate legislature was established) were assigned to me; the British statutes, from that period to the present day, to Mr. Wythe; and the Virginia laws to Mr. Pendleton. As the law of Descents, and the criminal law fell of course within my portion, I wished the committee to settle the leading principles of these, as a guide for me in framing them; and, with respect to the first, I proposed to abolish the law of primogeniture, and to make real estate descendible in parcenary to the next of kin, as personal property is, by the statute of distribution. Mr. Pendleton wished to preserve the right of primogeniture, but seeing at once that that could not prevail, he proposed we should adopt the Hebrew principle, and give a double portion to the elder son. I observed, that if the eldest son could eat twice as much, or do double work, it might be a natural evidence of his right to a double portion; but being on a par in his powers and wants, with his brothers and sisters, he should be on a par also in the partition of the patrimony; and such was the decision of the other members.

On the subject of the Criminal law, all were agreed, that the punishment of death should be abolished, except for treason and murder; and that, for other

felonies, should be substituted hard labor in the public works, and in some cases, the *Lex talionis*. How this last revolting principle came to obtain our approbation, I do not remember. There remained, indeed, in our laws, a vestige of it in a single case of a slave; it was the English law, in the time of the Anglo-Saxons, copied probably from the Hebrew law of "an eye for an eye, a tooth for a tooth," and it was the law of several ancient people; but the modern mind had left it far in the rear of its advances. These points, however, being settled, we repaired to our respective homes for the preparation of the work.

In the execution of my part, I thought it material not to vary the diction of the ancient statutes by modernizing it, nor to give rise to new questions by new expressions. The text of these statutes had been so fully explained and defined, by numerous adjudications, as scarcely ever now to produce a question in our courts. I thought it would be useful, also, in all new draughts, to reform the style of the later British statutes, and of our own acts of Assembly; which, from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty, by *saids* and *aforesaids*, by *ors* and by *ands*, to make them more plain, are really rendered more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves. We were employed in this work from that

time to February, 1779, when we met at Williamsburg, that is to say, Mr. Pendleton, Mr. Wythe and myself; and meeting day by day, we examined critically our several parts, sentence by sentence, scrutinizing and amending, until we had agreed on the whole. We then returned home, had fair copies made of our several parts, which were reported to the General Assembly, June 18, 1779, by Mr. Wythe and myself, Mr. Pendleton's residence being distant, and he having authorized us by letter to declare his approbation. We had, in this work, brought so much of the Common law as it was thought necessary to alter, all the British statutes from *Magna Charta* to the present day, and all the laws of Virginia, from the establishment of our legislature, in the 4th Jac. 1. to the present time, which we thought should be retained, within the compass of one hundred and twenty-six bills, making a printed folio of ninety pages only. Some bills were taken out, occasionally, from time to time, and passed; but the main body of the work was not entered on by the legislature until after the general peace, in 1785, when, by the unwearied exertions of Mr. Madison, in opposition to the endless quibbles, chicaneries, perversions, vexations and delays of lawyers and demi-lawyers, most of the bills were passed by the legislature, with little alteration.

The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of

reason and right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that its protection of opinion was meant to be universal. Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word "Jesus Christ," so that it should read, "a departure from the plan of Jesus Christ, the holy author of our religion;" the insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and Infidel of every denomination.

Beccaria, and other writers on crimes and punishments, had satisfied the reasonable world of the unrightfulness and inefficacy of the punishment of crimes by death; and hard labor on roads, canals and other public works, had been suggested as a proper substitute. The Revisors had adopted these opinions; but the general idea of our country had not yet advanced to that point. The bill, therefore, for proportioning crimes and punishments, was lost in the House of Delegates by a majority of a single vote. I learned afterwards, that the substitute of hard labor in public, was tried (I believe it was in Pennsylvania) without success. Exhibited as a public spectacle, with shaved heads and mean clothing, working on the high roads, produced in the criminals such a prostration of character, such an

abandonment of self-respect, as, instead of reforming, plunged them into the most desperate and hardened depravity of morals and character. To pursue the subject of this law.—I was written to-in 1785 (being then in Paris) by directors appointed to superintend the building of a Capitol in Richmond, to advise them as to a plan, and to add to it one of a Prison. Thinking it a favorable opportunity of introducing into the State an example of architecture, in the classic style of antiquity, and the Maison Quarrée of Nismes, an ancient Roman temple, being considered as the most perfect model existing of what may be called Cubic architecture, I applied to M. Clerissault, who had published drawings of the Antiquities of Nismes, to have me a model of the building made in stucco, only changing the order from Corinthian to Ionic, on account of the difficulty of the Corinthian capitals. I yielded, with reluctance, to the taste of Clerissault, in his preference of the modern capital of Scamozzi to the more noble capital of antiquity. This was executed by the artist whom Choiseul Gouffier had carried with him to Constantinople, and employed, while Ambassador there, in making those beautiful models of the remains of Grecian architecture which are to be seen at Paris. To adapt the exterior to our use, I drew a plan for the interior, with the apartments necessary for legislative, executive, and judiciary purposes; and accommodated in their size and distribution to the form and dimensions of the building.

These were forwarded to the Directors, in 1786, and were carried into execution, with some variations, not for the better, the most important of which, however, admit of future correction. With respect to the plan of a Prison, requested at the same time, I had heard of a benevolent society, in England, which had been indulged by the government, in an experiment of the effect of labor, in *solitary confinement*, on some of their criminals; which experiment had succeeded beyond expectation. The same idea had been suggested in France, and an Architect of Lyons had proposed a plan of a well-contrived edifice, on the principle of solitary confinement. I procured a copy, and as it was too large for our purposes, I drew one on a scale less extensive, but susceptible of additions as they should be wanting. This I sent to the Directors, instead of a plan of a common prison, in the hope that it would suggest the idea of labor in solitary confinement, instead of that on the public works, which we had adopted in our Revised Code. Its principle, accordingly, but not its exact form, was adopted by Latrobe in carrying the plan into execution, by the erection of what is now called the Penitentiary, built under his direction. In the meanwhile, the public opinion was ripening, by time, by reflection, and by the example of Pennsylvania, where labor on the highways had been tried, without approbation, from 1786 to '89, and had been followed by their Penitentiary system on the principle of confinement and labor, which was

proceeding auspiciously. In 1796, our legislature resumed the subject, and passed the law for amending the Penal laws of the commonwealth. They adopted solitary, instead of public, labor, established a gradation in the duration of the confinement, approximated the style of the law more to the modern usage, and, instead of the settled distinctions of murder and manslaughter, preserved in my bill, they introduced the new terms of murder in the first and second degree. Whether these have produced more or fewer questions of definition, I am not sufficiently informed of our judiciary transactions to say. I will here, however, insert the text of my bill, with the notes I made in the course of my researches into the subject.[1]

The acts of Assembly concerning the College of William and Mary, were properly within Mr. Pendleton's portion of our work; but these related chiefly to its revenue, while its constitution, organization and scope of science, were derived from its charter. We thought that on this subject, a systematical plan of general education should be proposed, and I was requested to undertake it. I accordingly prepared three bills for the Revisal, proposing three distinct grades of education, reaching all classes. 1st. Elementary schools, for all children generally, rich and poor. 2d. Colleges, for a middle degree of instruction, calculated for the common purposes of life, and such as would be desirable for all who were in

[1 See Appendix, note E.]

easy circumstances. And, 3d, an ultimate grade for teaching the sciences generally, and in their highest degree. The first bill proposed to lay off every county into Hundreds, or Wards, of a proper size and population for a school, in which reading, writing, and common arithmetic should be taught; and that the whole State should be divided into twenty-four districts, in each of which should be a school for classical learning, grammar, geography, and the higher branches of numerical arithmetic. The second bill proposed to amend the constitution of William and Mary college, to enlarge its sphere of science, and to make it in fact a University. The third was for the establishment of a library. These bills were not acted on until the same year, '96, and then only so much of the first as provided for elementary schools. The College of William and Mary was an establishment purely of the Church of England; the Visitors were required to be all of that Church; the Professors to subscribe its thirty-nine Articles; its Students to learn its Catechism; and one of its fundamental objects was declared to be, to raise up Ministers for that church. The religious jealousies, therefore, of all the dissenters, took alarm lest this might give an ascendancy to the Anglican sect, and refused acting on that bill. Its local eccentricity, too, and unhealthy autumnal climate, lessened the general inclination towards it. And in the Elementary bill, they inserted a provision which completely defeated it; for they left it to the court

of each county to determine for itself, when this act should be carried into execution, within their county. One provision of the bill was, that the expenses of these schools should be borne by the inhabitants of the county, every one in proportion to his general tax rate. This would throw on wealth the education of the poor; and the justices, being generally of the more wealthy class, were unwilling to incur that burden, and I believe it was not suffered to commence in a single county. I shall recur again to this subject, towards the close of my story, if I should have life and resolution enough to reach that term; for I am already tired of talking about myself.

The bill on the subject of slaves, was a mere digest of the existing laws respecting them, without any intimation of a plan for a future and general emancipation. It was thought better that this should be kept back, and attempted only by way of amendment, whenever the bill should be brought on. The principles of the amendment, however, were agreed on, that is to say, the freedom of all born after a certain day, and deportation at a proper age. But it was found that the public mind would not yet bear the proposition, nor will it bear it even at this day. Yet the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same gov-

ernment. Nature, habit, opinion have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation, peaceably, and in such slow degree, as that the evil will wear off insensibly, and their place be, *pari passu*, filled up by free white laborers. If, on the contrary, it is left to force itself on, human nature must shudder at the prospect held up. We should in vain look for an example in the Spanish deportation or deletion of the Moors. This precedent would fall far short of our case.

I considered four of these bills, passed or reported, as forming a system by which every fibre would be eradicated of ancient or future aristocracy; and a foundation laid for a government truly republican. The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, and preserve the soil of the country from being daily more and more absorbed in mortmain. The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor, substituting equal partition, the best of all Agrarian laws. The restoration of the rights of conscience relieved the people from taxation for the support of a religion not theirs; for the establishment was truly of the religion of the rich, the dissenting sects being entirely composed of the less wealthy people; and these, by the bill for a general education, would be qualified to understand

their rights, to maintain them, and to exercise with intelligence their parts in self-government; and all this would be effected, without the violation of a single natural right of any one individual citizen. To these, too, might be added, as a further security, the introduction of the trial by jury, into the Chancery courts, which have already ingulfed, and continue to ingulf, so great a proportion of the jurisdiction over our property.

On the 1st of June, 1779, I was appointed Governor of the Commonwealth, and retired from the legislature. Being elected, also, one of the Visitors of William and Mary college, a self-electing body, I effected, during my residence in Williamsburg that year, a change in the organization of that institution, by abolishing the Grammar school, and the two professorships of Divinity and Oriental languages, and substituting a professorship of Law and Police, one of Anatomy, Medicine and Chemistry, and one of Modern languages; and the charter confining us to six professorships, we added the Law of Nature and Nations, and the Fine Arts to the duties of the Moral professor, and Natural History to those of the professor of Mathematics and Natural Philosophy.

Being now, as it were, identified with the Commonwealth itself, to write my own history, during the two years of my administration, would be to write the public history of that portion of the revolution within this State. This has been done by others,

and particularly by Mr. Girardin, who wrote his Continuation of Burke's History of Virginia, while at Milton, in this neighborhood, had free access to all my papers while composing it, and has given as faithful an account as I could myself. For this portion, therefore, of my own life, I refer altogether to his history. From a belief that, under the pressure of the invasion under which we were then laboring, the public would have more confidence in a Military chief, and that the Military commander, being invested with the Civil power also, both might be wielded with more energy, promptitude and effect for the defence of the State, I resigned the administration at the end of my second year, and General Nelson was appointed to succeed me.

Soon after my leaving Congress, in September, '76, to wit, on the last day of that month, I had been appointed, with Dr. Franklin, to go to France, as a Commissioner, to negotiate treaties of alliance and commerce with that government. Silas Deane, then in France, acting as[1] agent for procuring military stores, was joined with us in commission. But such was the state of my family that I could not leave it, nor could I expose it to the dangers of the sea, and of capture by the British ships, then covering the ocean. I saw, too, that the laboring oar was really

[1] His ostensible character was to be that of a merchant, his real one that of agent for military supplies, and also for sounding the dispositions of the government of France, and seeing how far they would favor us, either secretly or openly. His appointment had been by the Committee of foreign correspondence, March, 1776.

at home, where much was to be done, of the most permanent interest, in new modelling our governments, and much to defend our fanes and fire-sides from the desolations of an invading enemy, pressing on our country in every point. I declined, therefore, and Mr. Lee was appointed in my place. On the 15th of June, 1781, I had been appointed, with Mr. Adams, Mr. Franklin, Mr. Jay, and Mr. Laurens, a Minister Plenipotentiary for negotiating peace, then expected to be effected through the mediation of the Empress of Russia. The same reasons obliged me still to decline; and the negotiation was in fact never entered on. But, in the autumn of the next year, 1782, Congress receiving assurances that a general peace would be concluded in the winter and spring, they renewed my appointment on the 13th of November of that year. I had, two months before that, lost the cherished companion of my life, in whose affections, unabated on both sides, I had lived the last ten years in unchequered happiness. With the public interests, the state of my mind concurred in recommending the change of scene proposed; and I accepted the appointment, and left Monticello on the 19th of December, 1782, for Philadelphia, where I arrived on the 27th. The Minister of France, Luzerne, offered me a passage in the Romulus frigate, which I accepted; but she was then lying a few miles below Baltimore, blocked up in the ice. I remained, therefore, a month in Philadelphia, looking over the papers in the office of State,

in order to possess myself of the general state of our foreign relations, and then went to Baltimore, to await the liberation of the frigate from the ice. After waiting there nearly a month, we received information that a Provisional treaty of peace had been signed by our Commissioners on the 3d of September, 1782, to become absolute, on the conclusion of peace between France and Great Britain. Considering my proceeding to Europe as now of no utility to the public, I returned immediately to Philadelphia, to take the orders of Congress, and was excused by them from further proceeding. I, therefore, returned home, where I arrived on the 15th of May, 1783.

On the 6th of the following month, I was appointed by the legislature a delegate to Congress, the appointment to take place on the 1st of November ensuing, when that of the existing delegation would expire. I, accordingly, left home on the 16th of October, arrived at Trenton, where Congress was sitting, on the 3d of November, and took my seat on the 4th, on which day Congress adjourned, to meet at Annapolis on the 26th.

Congress had now become a very small body, and the members very remiss in their attendance on its duties, insomuch, that a majority of the States, necessary by the Confederation to constitute a House even for minor business, did not assemble until the 13th of December.

They, as early as January 7, 1782, had turned

their attention to the moneys current in the several States, and had directed the Financier, Robert Morris, to report to them a table of rates, at which the foreign coins should be received at the treasury. That officer, or rather his assistant, Gouverneur Morris, answered them on the 15th, in an able and elaborate statement of the denominations of money current in the several States, and of the comparative value of the foreign coins chiefly in circulation with us. He went into the consideration of the necessity of establishing a standard of value with us, and of the adoption of a money Unit. He proposed for that Unit, such a fraction of pure silver as would be a common measure of the penny of every State, without leaving a fraction. This common divisor he found to be 1-1440 of a dollar, or 1-1600 of the crown sterling. The value of a dollar was, therefore, to be expressed by 1,440 units, and of a crown by 1,600; each Unit containing a quarter of a grain of fine silver. Congress turning again their attention to this subject the following year, the Financier, by a letter of April 30, 1783, further explained and urged the Unit he had proposed; but nothing more was done on it until the ensuing year, when it was again taken up, and referred to a committee, of which I was a member. The general views of the Financier were sound, and the principle was ingenious on which he proposed to found his Unit; but it was too minute for ordinary use, too laborious for computation, either by the head or in figures. The

price of a loaf of bread, 1-20 of a dollar, would be 72 units.

A pound of butter, 1-5 of a dollar, 288 units.

A horse or bullock, of eighty dollars value, would require a notation of six figures, to wit, 115,200, and the public debt, suppose of eighty millions, would require twelve figures, to wit, 115,200,000,000 units. Such a system of money-arithmetic would be entirely unmanageable for the common purposes of society. I proposed, therefore, instead of this, to adopt the Dollar as our Unit of account and payment, and that its divisions and sub-divisions should be in the decimal ratio. I wrote some notes on the subject, which I submitted to the consideration of the Financier. I received his answer and adherence to his general system, only agreeing to take for his Unit one hundred of those he first proposed, so that a Dollar should be 14 40-100, and a crown 16 units. I replied to this, and printed my notes and reply on a flying sheet, which I put into the hands of the members of Congress for consideration, and the Committee agreed to report on my principle. This was adopted the ensuing year, and is the system which now prevails. I insert, here, the Notes and Reply, as showing the different views on which the adoption of our money system hung.[1] The divisions into dimes, cents, and mills is now so well understood, that it would be easy of introduction into the kindred branches of weights and measures. I use

[1 See Appendix, note F.]

when I travel, an Odometer of Clarke's invention, which divides the mile into cents, and I find every one comprehends a distance readily, when stated to him in miles and cents; so he would in feet and cents, pounds and cents, &c.

The remissness of Congress, and their permanent session, began to be a subject of uneasiness; and even some of the legislatures had recommended to them intermissions, and periodical sessions. As the Confederation had made no provision for a visible head of the government, during vacations of Congress, and such a one was necessary to superintend the executive business, to receive and communicate with foreign ministers and nations, and to assemble Congress on sudden and extraordinary emergencies, I proposed, early in April, the appointment of a committee, to be called the "Committee of the States," to consist of a member from each State, who should remain in session during the recess of Congress: that the functions of Congress should be divided into executive and legislative, the latter to be reserved, and the former, by a general resolution, to be delegated to that Committee. This proposition was afterwards agreed to; a Committee appointed, who entered on duty on the subsequent adjournment of Congress, quarrelled very soon, split into two parties, abandoned their post, and left the government without any visible head, until the next meeting in Congress. We have since seen the same thing take place in the Directory of France; and I

believe it will forever take place in any Executive consisting of a plurality. Our plan, best, I believe, combines wisdom and practicability, by providing a plurality of Counsellors, but a single Arbiter for ultimate decision. I was in France when we heard of this schism, and separation of our Committee, and, speaking with Dr. Franklin of this singular disposition of men to quarrel, and divide into parties, he gave his sentiments, as usual, by way of Apologue. He mentioned the Eddystone lighthouse, in the British channel, as being built on a rock, in the mid-channel, totally inaccessible in winter, from the boisterous character of that sea, in that season; that, therefore, for the two keepers employed to keep up the lights, all provisions for the winter were necessarily carried to them in autumn, as they could never be visited again till the return of the milder season; that, on the first practicable day in the spring, a boat put off to them with fresh supplies. The boatmen met at the door one of the keepers, and accosted him with a "How goes it, friend? Very well. How is your companion? I do not know. Don't know? Is not he here? I can't tell. Have not you seen him to-day? No. When did you see him? Not since last fall. You have killed him? Not I, indeed." They were about to lay hold of him, as having certainly murdered his companion; but he desired them to go up stairs and examine for themselves. They went up, and there found the other keeper. They had quarrelled, it seems, soon

after being left there, had divided into two parties, assigned the cares below to one, and those above to the other, and had never spoken to, or seen, one another since.

But to return to our Congress at Annapolis. The definitive treaty of peace which had been signed at Paris on the 3d of September, 1783, and received here, could not be ratified without a House of nine States. On the 23d of December, therefore, we addressed letters to the several Governors, stating the receipt of the definitive treaty; that seven States only were in attendance, while nine were necessary to its ratification; and urging them to press on their delegates the necessity of their immediate attendance. And on the 26th, to save time, I moved that the Agent of Marine (Robert Morris) should be instructed to have ready a vessel at this place, at New York, and at some Eastern port, to carry over the ratification of the treaty when agreed to. It met the general sense of the House, but was opposed by Dr. Lee, on the ground of expense, which it would authorize the Agent to incur for us; and, he said, it would be better to ratify at once, and send on the ratification. Some members had before suggested, that sever. States were competent to the ratification. My motion was therefore postponed, and another brought forward by Mr. Read, of South Carolina, for an immediate ratification. This was debated the 26th and 27th. Read, Lee, Williamson and Jeremiah Chase, urged that ratification was a mere

matter of form, that the treaty was conclusive from the moment it was signed by the ministers; that, although the Confederation requires the assent of *nine States* to *enter into* a treaty, yet, that its conclusion could not be called *entrance into it;* that supposing nine States requisite, it would be in the power of five States to keep us always at war; that nine States had virtually authorized the ratification, having ratified the provisional treaty, and instructed their ministers to agree to a definitive one in the same terms, and the present one was, in fact, substantially, and almost verbatim, the same; that there now remain but sixty-seven days for the ratification, for its passage across the Atlantic, and its exchange; that there was no hope of our soon having nine States present; in fact, that this was the ultimate point of time to which we could venture to wait; that if the ratification was not in Paris by the time stipulated, the treaty would become void; that if ratified by seven States, it would go under our seal, without its being known to Great Britain that only seven had concurred; that it was a question of which they had no right to take cognizance, and we were only answerable for it to our constituents; that it was like the ratification which Great Britain had received from the Dutch, by the negotiations of Sir William Temple.

On the contrary, it was argued by Monroe, Gerry, Howel, Ellery and myself, that by the modern usage of Europe, the ratification was considered as the act

which gave validity to a treaty, until which, it was not obligatory.[1] That the commission to the ministers reserved the ratification to Congress; that the treaty itself stipulated that it should be ratified; that it became a second question, who were competent to the ratification? That the Confederation expressly required nine States to enter into any treaty; that, by this, that instrument must have intended, that the assent of nine States should be necessary, as well to the *completion* as to the *commencement* of the treaty, its object having been to guard the rights of the Union in all those important cases where nine States are called for; that by the contrary construction, seven States, containing less than one-third of our whole citizens, might rivet on us a treaty, commenced indeed under commission and instructions from nine States, but formed by the minister in express contradiction to such instructions, and in direct sacrifice of the interests of so great a majority; that the definitive treaty was admitted not to be a verbal copy of the provisional one, and whether the departures from it were of substance, or not, was a question on which nine States alone were competent to decide; that the circumstances of the ratification of the provisional articles by nine States, the instructions to our ministers to form a definitive one by them, and their actual agreement in substance, do not render us competent to ratify in the present instance; if these

[1] Vattel L. 2, § 156. L. 4, § 77. 1. Mably Droit D'Europe, 86.

circumstances are in themselves a ratification, nothing further is requisite than to give attested copies of them, in exchange for the British ratification; if they are not, we remain where we were, without a ratification by nine States, and incompetent ourselves to ratify; that it was but four days since the seven States, now present, unanimously concurred in a resolution, to be forwarded to the Governors of the absent States, in which they stated, as a cause for urging on their delegates, that nine States were necessary to ratify the treaty; that in the case of the Dutch ratification, Great Britain had courted it, and therefore was glad to accept it as it was; that they knew our Constitution, and would object to a ratification by seven; that, if that circumstance was kept back, it would be known hereafter, and would give them ground to deny the validity of a ratification, into which they should have been surprised and cheated, and it would be a dishonorable prostitution of our seal; that there is a hope of nine States; that if the treaty would become null, if not ratified in time, it would not be saved by an imperfect ratification; but that, in fact, it would not be null, and would be placed on better ground, going in unexceptionable form, though a few days too late, and rested on the small importance of this circumstance, and the physical impossibilities which had prevented a punctual compliance in point of time; that this would be approved by all nations, and by Great Britain herself, if not

determined to renew the war, and if so determined, she would never want excuses, were this out of the way. Mr. Read gave notice, he should call for the yeas and nays; whereon those in opposition, prepared a resolution, expressing pointedly the reasons of their dissent from his motion. It appearing, however, that his proposition could not be carried, it was thought better to make no entry at all. Massachusetts alone would have been for it; Rhode Island, Pennsylvania and Virginia against it, Delaware, Maryland and North Carolina, would have been divided.

Our body was little numerous, but very contentious. Day after day was wasted on the most unimportant questions. A member, one of those afflicted with the morbid rage of debate, of an ardent mind, prompt imagination, and copious flow of words, who heard with impatience any logic which was not his own, sitting near me on some occasion of a trifling but wordy debate, asked me how I could sit in silence, hearing so much false reasoning, which a word should refute? I observed to him, that to refute indeed was easy, but to silence was impossible; that in measures brought forward by myself, I took the laboring oar, as was incumbent on me; but that in general, I was willing to listen; that if every sound argument or objection was used by some one or other of the numerous debaters, it was enough; if not, I thought it sufficient to suggest the omission, without going into a repetition of what had been

already said by others: that this was a waste and abuse of the time and patience of the House, which could not be justified. And I believe, that if the members of deliberate bodies were to observe this course generally, they would do in a day, what takes them a week; and it is really more questionable, than may at first be thought, whether Bonaparte's dumb legislature, which said nothing, and did much, may not be preferable to one which talks much, and does nothing. I served with General Washington in the legislature of Virginia, before the revolution, and, during it, with Dr. Franklin in Congress. I never heard either of them speak ten minutes at a time, nor to any but the main point, which was to decide the question. They laid their shoulders to the great points, knowing that the little ones would follow of themselves. If the present Congress errs in too much talking, how can it be otherwise, in a body to which the people send one hundred and fifty lawyers, whose trade it is to question everything, yield nothing, and talk by the hour? That one hundred and fifty lawyers should do business together, ought not to be expected. But to return again to our subject.

Those who thought seven States competent to the ratification, being very restless under the loss of their motion, I proposed, on the third of January, to meet them on middle ground, and therefore moved a resolution, which premised, that there were but seven States present, who were unanimous for the rati-

fication, but that they differed in opinion on the question of competency; that those however in the negative were unwilling that any powers which it might be supposed they possessed, should remain unexercised for the restoration of peace, provided it could be done, saving their good faith, and without importing any opinion of Congress, that seven States were competent, and resolving that the treaty be ratified so far as they had power; that it should be transmitted to our ministers, with instructions to keep it uncommunicated; to endeavor to obtain three months longer for exchange of ratifications; that they should be informed, that so soon as nine States shall be present, a ratification by nine shall be sent them: if this should get to them before the ultimate point of time for exchange, they were to use it, and not the other; if not, they were to offer the act of the seven States in exchange, informing them the treaty had come to hand while Congress was not in session; that but seven States were as yet assembled, and these had unanimously concurred in the ratification. This was debated on the third and fourth; and on the fifth, a vessel being to sail for England, from this port (Annapolis), the House directed the President to write to our ministers accordingly.

January 14. Delegates from Connecticut having attended yesterday, and another from South Carolina coming in this day, the treaty was ratified without a dissenting voice; and three instruments

of ratification were ordered to be made out, one of which was sent by Colonel Harmer, another by Colonel Franks, and the third transmitted to the Agent of Marine, to be forwarded by any good opportunity.

Congress soon took up the consideration of their foreign relations. They deemed it necessary to get their commerce placed with every nation, on a footing as favorable as that of other nations; and for this purpose, to propose to each a distinct treaty of commerce. This act too would amount to an acknowledgment, by each, of our independence, and of our reception into the fraternity of nations; which, although as possessing our station of right, and in fact we would not condescend to ask, we were not unwilling to furnish opportunities for receiving their friendly salutations and welcome. With France, the United Netherlands, and Sweden, we had already treaties of commerce; but commissions were given for those countries also, should any amendments be thought necessary. The other States to which treaties were to be proposed, were England, Hamburg, Saxony, Prussia, Denmark, Russia, Austria, Venice, Rome, Naples, Tuscany, Sardinia, Genoa, Spain, Portugal, the Porte, Algiers, Tripoli, Tunis, and Morocco.

On the 7th of May Congress resolved that a Minister Plenipotentiary should be appointed, in addition to Mr. Adams and Dr. Franklin, for negotiating treaties of commerce with foreign nations, and I was

elected to that duty. I accordingly left Annapolis on the 11th, took with me my eldest daughter, then at Philadelphia (the two others being too young for the voyage), and proceeded to Boston, in quest of a passage. While passing through the different States, I made a point of informing myself of the state of the commerce of each; went on to New Hampshire with the same view, and returned to Boston. Thence I sailed on the 5th of July, in the Ceres, a merchant ship of Mr. Nathaniel Tracey, bound to Cowes. He was himself a passenger, and, after a pleasant voyage of nineteen days, from land to land, we arrived at Cowes on the 26th. I was detained there a few days by the indisposition of my daughter. On the 30th, we embarked for Havre, arrived there on the 31st, left it on the 3d of August, and arrived at Paris on the 6th. I called immediately on Dr. Franklin, at Passy, communicated to him our charge, and we wrote to Mr. Adams, then at the Hague, to join us at Paris.

Before I had left America, that is to say, in the year 1781, I had received a letter from M. de Marbois, of the French legation in Philadelphia, informing me, he had been instructed by his government to obtain such statistical accounts of the different States of our Union, as might be useful for their information; and addressing to me a number of queries relative to the State of Virginia. I had always made it a practice, whenever an opportunity occurred of obtaining any information of our coun-

try, which might be of use to me in any station, public or private, to commit it to writing. These memoranda were on loose papers, bundled up without order, and difficult of recurrence, when I had occasion for a particular one. I thought this a good occasion to embody their substance, which I did in the order of Mr. Marbois' queries, so as to answer his wish, and to arrange them for my own use. Some friends, to whom they were occasionally communicated, wished for copies; but their volume rendering this too laborious by hand, I proposed to get a few printed, for their gratification. I was asked such a price, however, as exceeded the importance of the object. On my arrival at Paris, I found it could be done for a fourth of what I had been asked here. I therefore corrected and enlarged them, and had two hundred copies printed, under the title of "Notes on Virginia." I gave a very few copies to some particular friends in Europe, and sent the rest to my friends in America. A European copy, by the death of the owner, got into the hands of a bookseller, who engaged its translation, and when ready for the press, communicated his intentions and manuscript to me, suggesting that I should correct it, without asking any other permission for the publication. I never had seen so wretched an attempt at translation. Interverted, abridged, mutilated, and often reversing the sense of the original, I found it a blotch of errors, from beginning to end. I corrected some of the most material, and, in that form,

it was printed in French. A London bookseller, on seeing the translation, requested me to permit him to print the English original. I thought it best to do so, to let the world see that it was not really so bad as the French translation had made it appear. And this is the true history of that publication.

Mr. Adams soon joined us at Paris, and our first employment was to prepare a general form, to be proposed to such nations as were disposed to treat with us. During the negotiations for peace with the British Commissioner, David Hartley, our Commissioners had proposed, on the suggestion of Dr. Franklin, to insert an article, exempting from capture by the public or private armed ships, of either belligerent, when at war, all merchant vessels and their cargoes, employed merely in carrying on the commerce between nations. It was refused by England, and unwisely, in my opinion. For, in the case of a war with us, their superior commerce places infinitely more at hazard on the ocean, than ours; and, as hawks abound in proportion to game, so our privateers would swarm, in proportion to the wealth exposed to their prize, while theirs would be few, for want of subjects of capture. We inserted this article in our form, with a provision against the molestation of fishermen, husbandmen, citizens unarmed, and following their occupations in unfortified places, for the humane treatment of prisoners of war, the abolition of contraband of war, which exposes merchant vessels to such vexatious and ruinous

detentions and abuses; and for the principle of free bottoms, free goods.

In a conference with the Count de Vergennes, it was thought better to leave to legislative regulation, on both sides, such modifications of our commercial intercourse, as would voluntarily flow from amicable dispositions. Without urging, we sounded the ministers of the several European nations, at the court of Versailles, on their dispositions towards mutual commerce, and the expediency of encouraging it by the protection of a treaty. Old Frederic, of Prussia, met us cordially, and without hesitation, and appointing the Baron de Thulemeyer, his minister at the Hague, to negotiate with us, we communicated to him our Projét, which, with little alteration by the King, was soon concluded. Denmark and Tuscany, entered also into negotiations with us. Other powers appearing indifferent; we did not think it proper to press them. They seemed, in fact, to know little about us, but as rebels, who had been successful in throwing off the yoke of the mother country. They were ignorant of our commerce, which had been always monopolized by England, and of the exchange of articles it might offer advantageously to both parties. They were inclined, therefore, to stand aloof, until they could see better what relations might be usefully instituted with us. The negotiations, therefore, begun with Denmark and Tuscany, we protracted designedly, until our powers had expired; and abstained

from making new propositions to others having no colonies; because our commerce being an exchange of raw for wrought materials, is a competent price for admission into the colonies of those possessing them; but were we to give it, without price, to others, all would claim it, without price, on the ordinary ground of *gentis amicissimæ*.

Mr. Adams being appointed Minister Plenipotentiary of the United States, to London, left us in June, and in July, 1785, Dr. Franklin returned to America, and I was appointed his successor at Paris. In February, 1786, Mr. Adams wrote to me, pressingly, to join him in London immediately, as he thought he discovered there some symptoms of better disposition towards us. Colonel Smith, his secretary of legation, was the bearer of his urgencies for my immediate attendance. I, accordingly, left Paris on the 1st of March, and, on my arrival in London, we agreed on a very summary form of treaty, proposing an exchange of citizenship for our citizens, our ships, and our productions generally, except as to office. On my presentation, as usual, to the King and Queen, at their levées, it was impossible for anything to be more ungracious, than their notice of Mr. Adams and myself. I saw, at once, that the ulcerations of mind in that quarter, left nothing to be expected on the subject of my attendance; and, on the first conference with the Marquis of Caermarthen, the Minister for foreign affairs, the distance and disinclination which he

betrayed in his conversation, the vagueness and evasions of his answers to us, confirmed me in the belief of their aversion to have anything to do with us. We delivered him, however, our Projét, Mr. Adams not despairing as much as I did, of its effect. We afterwards, by one or more notes, requested his appointment of an interview and conference, which, without directly declining, he evaded, by pretences of other pressing occupations for the moment. After staying there seven weeks, till within a few days of the expiration of our commission, I informed the minister, by note, that my duties at Paris required my return to that place, and that I should, with pleasure, be the bearer of any commands to his Ambassador there. He answered, that he had none, and, wishing me a pleasant journey, I left London the 26th, and arrived at Paris the 30th of April.

While in London, we entered into negotiations with the Chevalier Pinto, Ambassador of Portugal, at that place. The only article of difficulty between us was, a stipulation that our bread stuff should be received in Portugal, in the form of flour as well as of grain. He approved of it himself, but observed that several Nobles, of great influence at their court, were the owners of wind-mills in the neighborhood of Lisbon, which depended much for their profits on manufacturing our wheat, and that this stipulation would endanger the whole treaty. He signed it, however, and its fate was what he had candidly portended.

My duties, at Paris, were confined to a few objects; the receipt of our whale-oils, salted fish, and salted meats, on favorable terms; the admission of our rice on equal terms with that of Piedmont, Egypt and the Levant; a mitigation of the monopolies of our tobacco by the Farmers-general, and a free admission of our productions into their islands, were the principal commercial objects which required attention; and, on these occasions, I was powerfully aided by all the influence and the energies of the Marquis de La Fayette, who proved himself equally zealous for the friendship and welfare of both nations; and, in justice, I must also say, that I found the government entirely disposed to befriend us on all occasions, and to yield us every indulgence, not absolutely injurious to themselves. The Count de Vergennes had the reputation, with the diplomatic corps, of being wary and slippery in his diplomatic intercourse; and so he might be with those whom he knew to be slippery, and double-faced themselves. As he saw that I had no indirect views, practised no subtleties, meddled in no intrigues, pursued no concealed object, I found him as frank, as honorable, as easy of access to reason, as any man with whom I had ever done business; and I must say the same for his successor, Montmorin, one of the most honest and worthy of human beings.

Our commerce, in the Mediterranean, was placed under early alarm, by the capture of two of our ves-

sels and crews by the Barbary cruisers. I was very unwilling that we should acquiesce in the European humiliation, of paying a tribute to those lawless pirates, and endeavored to form an association of the powers subject to habitual depredations from them. I accordingly prepared, and proposed to their Ministers at Paris, for consultation with their governments, articles of a special confederation, in the following form:

"Proposals for concerted operation among the powers at war with the piratical States of Barbary.

1. "It is proposed, that the several powers at war with the piratical States of Barbary, or any two or more of them who shall be willing, shall enter into a convention to carry on their operations against those States, in concert, beginning with the Algerines.

2. "This convention shall remain open to any other powers, who shall, at any future time, wish to accede to it; the parties reserving the right to prescribe the conditions of such accession, according to the circumstances existing at the time it shall be proposed.

3. "The object of the convention shall be, to compel the piratical States to perpetual peace, without price, and to guarantee that peace to each other.

4. "The operations for obtaining this peace shall be constant cruises on their coast, with a naval force now to be agreed on. It is not proposed that this force shall be so considerable as to be inconvenient

to any party. It is believed that half a dozen frigates, with as many Tenders or Xebecs, one half of which shall be in cruise, while the other half is at rest, will suffice.

5. "The force agreed to be necessary, shall be furnished by the parties, in certain quotas, now to be fixed; it being expected, that each will be willing to contribute, in such proportion as circumstances may render reasonable.

6. "As miscarriages often proceed from the want of harmony among officers of different nations, the parties shall now consider and decide, whether it will not be better to contribute their quotas in money, to be employed in fitting out and keeping on duty, a single fleet of the force agreed on.

7. "The difficulties and delays, too, which will attend the management of these operations, if conducted by the parties themselves separately, distant as their courts may be from one another, and incapable of meeting in consultation, suggest a question, whether it will not be better for them to give full powers, for that purpose, to their Ambassadors, or other Ministers resident at some one court of Europe, who shall form a Committee, or Council, for carrying this convention into effect; wherein, the vote of each member shall be computed in proportion to the quota of his sovereign, and the majority so computed, shall prevail in all questions within the view of this convention. The court of Versailles is proposed, on account of its neighborhood to the

Mediterranean, and because all those powers are represented there, who are likely to become parties to this convention.

8. "To save to that Council the embarrassment of personal solicitations for office, and to assure the parties that their contributions will be applied solely to the object for which they are destined, there shall be no establishment of officers for the said Council, such as Commissioners, Secretaries, or any other kind, with either salaries or perquisites, nor any other lucrative appointments but such whose functions are to be exercised on board the said vessels.

9. "Should war arise between any two of the parties to this convention, it shall not extend to this enterprise, nor interrupt it; but as to this they shall be reputed at peace.

10. "When Algiers shall be reduced to peace, the other piratical States, if they refuse to discontinue their piracies, shall become the objects of this convention, either successively or together, as shall seem best.

11. "Where this convention would interfere with treaties actually existing between any of the parties and the States of Barbary, the treaty shall prevail, and such party shall be allowed to withdraw from the operations against that State."

Spain had just concluded a treaty with Algiers, at the expense of three millions of dollars, and did not like to relinquish the benefit of that, until the other party should fail in their observance of it.

Portugal, Naples, the two Sicilies, Venice, Malta, Denmark and Sweden, were favorably disposed to such an association; but their representatives at Paris expressed apprehensions that France would interfere, and, either openly or secretly, support the Barbary powers; and they required, that I should ascertain the dispositions of the Count de Vergennes on the subject. I had before taken occasion to inform him of what we were proposing, and, therefore, did not think it proper to insinuate any doubt of the fair conduct of his government; but, stating our propositions, I mentioned the apprehensions entertained by us, that England would interfere in behalf of those piratical governments. "She dares not do it," said he. I pressed it no further. The other Agents were satisfied with this indication of his sentiments, and nothing was now wanting to bring it into direct and formal consideration, but the assent of our government, and their authority to make the formal proposition. I communicated to them the favorable prospect of protecting our commerce from the Barbary depredations, and for such a continuance of time, as, by an exclusion of them from the sea, to change their habits and characters, from a predatory to an agricultural people: towards which, however, it was expected they would contribute a frigate, and its expenses, to be in constant cruise. But they were in no condition to make any such engagement. Their recommendatory powers for obtaining contributions, were so openly neglected

by the several States, that they declined an engagement which they were conscious they could not fulfil with punctuality; and so it fell through.

[1] In 1786, while at Paris, I became acquainted with John Ledyard, of Connecticut, a man of genius, of some science, and of fearless courage and enterprise. He had accompanied Captain Cook in his voyage to the Pacific, had distinguished himself on several occasions by an unrivalled intrepidity, and published an account of that voyage, with details unfavorable to Cook's deportment towards the savages, and lessening our regrets at his fate. Ledyard had come to Paris, in the hope of forming a company to engage in the fur trade of the Western coast of America. He was disappointed in this, and, being out of business, and of a roaming, restless character, I suggested to him the enterprise of exploring the Western part of our continent, by passing through St. Petersburg to Kamschatka, and procuring a passage thence in some of the Russian vessels to Nootka Sound, whence he might make his way across the continent to the United States; and I undertook to have the permission of the Empress of Russia solicited. He eagerly embraced the proposition, and M. de Sémoulin, the Russian Ambassador, and more particularly Baron Grimm, the special correspondent of the Empress, solicited her permission for him to pass through

[[1] In the original MS., the paragraph ending "fell through," terminates page 81; between this page and the next, there is stitched in, a leaf of old writing, constituting a memorandum, whereof note G. in the Appendix, is a copy.]

her dominions, to the Western coast of America. And here I must correct a material error, which I have committed in another place, to the prejudice of the Empress. In writing some notes of the life of Captain Lewis, prefixed to his "Expedition to the Pacific," I stated that the Empress gave the permission asked, and afterwards retracted it. This idea, after a lapse of twenty-six years, had so insinuated itself into my mind, that I committed it to paper, without the least suspicion of error. Yet I find, on recurring to my letters of that date, that the Empress refused permission at once, considering the enterprise as entirely chimerical. But Ledyard would not relinquish it, persuading himself that, by proceeding to St. Petersburg, he could satisfy the Empress of its practicability, and obtain her permission. He went accordingly, but she was absent on a visit to some distant part of her dominions,[1] and he pursued his course to within two hundred miles of Kamschatka, where he was overtaken by an arrest from the Empress, brought back to Poland, and there dismissed. I must therefore, in justice, acquit the Empress of ever having for a moment countenanced, even by the indulgence of an innocent passage through her territories, this interesting enterprise.

The pecuniary distresses of France produced this year a measure of which there had been no example for nearly two centuries, and the consequences of which, good and evil, are not yet calculable. For its remote causes, we must go a little back.

[1] The Crimea.

Celebrated writers of France and England had already sketched good principles on the subject of government; yet the American Revolution seems first to have awakened the thinking part of the French nation in general, from the sleep of despotism in which they were sunk. The officers too, who had been to America, were mostly young men, less shackled by habit and prejudice, and more ready to assent to the suggestions of common sense, and feeling of common rights, than others. They came back with new ideas and impressions. The press, notwithstanding its shackles, began to disseminate them; conversation assumed new freedoms; Politics became the theme of all societies, male and female, and a very extensive and zealous party was formed, which acquired the appellation of the Patriotic party, who, sensible of the abusive government under which they lived, sighed for occasions of reforming it. This party comprehended all the honesty of the kingdom, sufficiently at leisure to think, the men of letters, the easy Bourgeois, the young nobility, partly from reflection, partly from mode; for these sentiments became matter of mode, and as such, united most of the young women to the party. Happily for the nation, it happened, at the same moment, that the dissipations of the Queen and court, the abuses of the pension-list, and dilapidations in the administration of every branch of the finances, had exhausted the treasures and credit of the nation, insomuch that its most necessary functions were paralyzed. To reform

these abuses would have overset the Minister; to impose new taxes by the authority of the King, was known to be impossible, from the determined opposition of the Parliament to their enregistry. No resource remained then, but to appeal to the nation. He advised, therefore, the call of an Assembly of the most distinguished characters of the nation, in the hope that, by promises of various and valuable improvements in the organization and regimen of the government, they would be induced to authorize new taxes, to control the opposition of the Parliament, and to raise the annual revenue to the level of expenditures. An Assembly of Notables therefore, about one hundred and fifty in number, named by the King, convened on the 22d of February. The Minister (Calonne) stated to them, that the annual excess of expenses beyond the revenue, when Louis XVI. came to the throne, was thirty-seven millions of livres; that four hundred and forty millions had been borrowed to re-establish the navy; that the American war had cost them fourteen hundred and forty millions (two hundred and fifty-six millions of dollars), and that the interest of these sums, with other increased expenses, had added forty millions more to the annual deficit. (But a subsequent and more candid estimate made it fifty-six millions.) He proffered them a universal redress of grievances, laid open those grievances fully, pointed out sound remedies, and, covering his canvas with objects of this magnitude, the deficit dwindled to a little acces-

sory, scarcely attracting attention. The persons chosen were the most able and independent characters in the kingdom, and their support, if it could be obtained, would be enough for him. They improved the occasion for redressing their grievances, and agreed that the public wants should be relieved; but went into an examination of the causes of them. It was supposed that Calonne was conscious that his accounts could not bear examination; and it was said, and believed, that he asked of the King, to send four members to the Bastile, of whom the Marquis de La Fayette was one, to banish twenty others, and two of his Ministers. The King found it shorter to banish him. His successor went on in full concert with the Assembly. The result was an augmentation of the revenue, a promise of economies in its expenditure, of an annual settlement of the public accounts before a council, which the Comptroller, having been heretofore obliged to settle only with the King in person, of course never settled at all; an acknowledgment that the King could not lay a new tax, a reformation of the Criminal laws, abolition of torture, suppression of corvees, reformation of the gabelles, removal of the interior Custom Houses, free commerce of grain, internal and external, and the establishment of Provincial Assemblies; which, altogether, constituted a great mass of improvement in the condition of the nation. The establishment of the Provincial Assemblies was, in itself, a fundamental improvement. They would be of the choice

of the people, one-third renewed every year, in those provinces where there are no States, that is to say, over about three-fourths of the kingdom. They would be partly an Executive themselves, and partly an Executive Council to the Intendant, to whom the Executive power, in his province, had been heretofore entirely delegated. Chosen by the people, they would soften the execution of hard laws, and, having a right of representation to the King, they would censure bad laws, suggest good ones, expose abuses, and their representations, when united, would command respect. To the other advantages, might be added the precedent itself of calling the Assemblée des Notables, which would perhaps grow into habit. The hope was, that the improvements thus promised would be carried into effect; that they would be maintained during the present reign, and that that would be long enough for them to take some root in the constitution, so that they might come to be considered as a part of that, and be protected by time, and the attachment of the nation.

The Count de Vergennes had died a few days before the meeting of the Assembly, and the Count de Montmorin had been named Minister of Foreign Affairs, in his place. Villedeuil succeeded Calonne, as Comptroller General, and Lomenie de Bryenne, Archbishop of Thoulouse, afterwards of Sens, and ultimately Cardinal Lomenie, was named Minister principal, with whom the other Ministers were to transact the business of their departments, heretofore done with the

King in person; and the Duke de Nivernois, and M. de Malesherbes, were called to the Council. On the nomination of the Minister principal, the Marshals de Segur and de Castries retired from the departments of War and Marine, unwilling to act subordinately, or to share the blame of proceedings taken out of their direction. They were succeeded by the Count de Brienne, brother of the Prime Minister, and the Marquis de La Luzerne, brother to him who had been Minister in the United States.

A dislocated wrist, unsuccessfully set, occasioned advice from my surgeon, to try the mineral waters of Aix, in Provence, as a corroborant. I left Paris for that place therefore, on the 28th of February, and proceeded up the Seine, through Champagne and Burgundy, and down the Rhone through the Beaujolais by Lyons, Avignon, Nismes to Aix; where, finding on trial no benefit from the waters, I concluded to visit the rice country of Piedmont, to see if anything might be learned there, to benefit the rivalship of our Carolina rice with that, and thence to make a tour of the seaport towns of France, along its Southern and Western coast, to inform myself, if anything could be done to favor our commerce with them. From Aix, therefore, I took my route by Marseilles, Toulon, Hieres, Nice, across the Col de Tende, by Coni, Turin, Vercelli, Novara, Milan, Pavia, Novi, Genoa. Thence, returning along the coast of Savona, Noli, Albenga, Oneglia, Monaco, Nice, Antibes, Frejus, Aix, Marseilles, Avignon, Nismes,

Montpellier, Frontignan, Cette, Agde, and along the canal of Languedoc, by Bezieres, Narbonne, Cascassonne, Castelnaudari, through the Souterrain of St. Feriol, and back by Castelnaudari, to Toulouse; thence to Montauban, and down the Garonne by Langon to Bordeaux. Thence to Rochefort, la Rochelle, Nantes, L'Orient; then back by Rennes to Nantes, and up the Loire by Angers, Tours, Amboise, Blois to Orleans, thence direct to Paris, where I arrived on the 10th of June. Soon after my return from this journey, to wit, about the latter part of July, I received my younger daughter, Maria, from Virginia, by the way of London, the youngest having died some time before.

The treasonable perfidy of the Prince of Orange, Stadtholder and Captain General of the United Netherlands, in the war which England waged against them, for entering into a treaty of commerce with the United States, is known to all. As their Executive officer, charged with the conduct of the war, he contrived to baffle all the measures of the States General, to dislocate all their military plans and played false into the hands of England against his own country, on every possible occasion, confident in her protection, and in that of the King of Prussia, brother to his Princess. The States General, indignant at this patricidal conduct, applied to France for aid, according to the stipulations of the treaty concluded with her in '85. It was assured to them readily, and in cordial terms, in a letter from

the Count de Vergennes, to the Marquis de Verac, Ambassador of France at the Hague, of which the following is an extract:

"Extrait de la depéche de Monsieur le Comte de Vergennes à Monsieur le Marquis de Verac, Ambassadeur de France à la Haye, du 1er Mars, 1786.

"Le Roi concourrera, autant, qu'il sera en son pouvoir, au succes de la chose, et vous inviterez, de sa part, les patriotes de lui communiquer leurs vues, leurs plans, et leurs envieux. Vous les assurerez, que le roi prend un interêt veritable à leurs personnes comme à leur cause, et qu' ils peuvent compter sur sa protection. Ils doivent y compter d'autant plus, Monsieur, que nous ne dissimulons pas, que si Monsieur le Stadhoulder reprend son ancienne influence, le systeme Anglois ne tardera pas de prevaloir, et que notre alliance deviendroit un être de raison. Les Patriotes sentiront facilement, que cette position seroit incompatible avec la dignité, comme avec la consideration de sa majesté. Mais dans le cas, Monsieur, ou les chefs des Patriotes auroient à craindre une scission, ils auroient le temps suffisant pour ramener ceux de leurs amis, que les Anglomanes ont egarés, et preparer les choses, de manière que la question de nouveau mise en deliberation, soit decidée selon leurs desirs. Dans cette hypothese, le roi vous autorise à agir de concert avec eux, de suivre la direction qu' ils jugeront devoir vous donner, et d'employer tous les moyens pour augmenter le nombre des partisans de la bonne cause.

Il me reste, Monsieur, de vous parler de la sureté personelle des Patriotes. Vous les assurerez, que dans tout etat de cause, le roi les prend sous sa protection immediate, et vous ferez connoitre, partout ou vous le jugerez necessaire, que sa Majesté regarderoit comme une offense personnelle, tout ce qu' on entreprenderoit contre leur liberté. Il est à presumer que ce langage, tenu avec energie, en imposera à l'audace des Anglomanes, et que Monsieur le Prince de Nassau croira courir quelque risque en provoquant le ressentiment de sa Majesté."[1]

This letter was communicated by the Patriots to

[1] Extract from the despatch of the Count de Vergennes, to the Marquis de Verac, Ambassador from France, at the Hague, dated March 1, 1786:

"The King will give his aid, as far as may be in his power, towards the success of the affair, and will, on his part, invite the Patriots to communicate to him their views, their plans, and their discontents. You may assure them that the King takes a real interest in themselves as well as their cause, and that they may rely upon his protection. On this they may place the greater dependence, as we do not conceal, that if the Stadtholder resumes his former influence, the English System will soon prevail, and our alliance become a mere affair of the imagination. The Patriots will readily feel, that this position would be incompatible both with the dignity and consideration of his Majesty. But in case the Chief of the Patriots should have to fear a division, they would have time sufficient to reclaim those whom the Anglomaniacs had misled, and to prepare matters in such a manner, that the question when again agitated, might be decided according to their wishes. In such a hypothetical case, the King authorizes you to act in concert with them, to pursue the direction which they may think proper to give you, and to employ every means to augment the number of the partisans of the good cause. It remains for me to speak of the personal security of the Patriots. You may assure them, that under every circumstance, the King will take them under his immediate protection, and you will make known wherever you may judge neces-

me, when at Amsterdam, in 1788, and a copy sent by me to Mr. Jay, in my letter to him of March 16, 1788.

The object of the Patriots was, to establish a representative and republican government. The majority of the States General were with them, but the majority of the populace of the towns was with the Prince of Orange; and that populace was played off with great effect, by the triumvirate of * * * Harris, the English Ambassador, afterwards Lord Malmesbury, the Prince of Orange, a stupid man, and the Princess as much a man as either of her colleagues, in audaciousness, in enterprise, and in the thirst of domination. By these, the mobs of the Hague were excited against the members of the States General; their persons were insulted and endangered in the streets; the sanctuary of their houses was violated; and the Prince, whose function and duty it was to repress and punish these violations of order, took no steps for that purpose. The States General, for their own protection, were therefore obliged to place their militia under the command of a Committee. The Prince filled the courts of London and Berlin with complaints at this usurpation of his prerogatives, and, forgetting that he was but the first servant of a Republic, marched his

sary, that his Majesty will regard as a personal offence every undertaking against their liberty. It is to be presumed that this language, energetically maintained, may have some effect on the audacity of the Anglomaniacs, and that the Prince de Nassau will feel that he runs some risk in provoking the resentment of his Majesty."]

regular troops against the city of Utrecht, where the States were in session. They were repulsed by the militia. His interests now became marshalled with those of the public enemy, and against his own country. The States, therefore, exercising their rights of sovereignty, deprived him of all his powers. The great Frederic had died in August, '86. He had never intended to break with France in support of the Prince of Orange. During the illness of which he died, he had, through the Duke of Brunswick, declared to the Marquis de La Fayette, who was then at Berlin, that he meant not to support the English interest in Holland: that he might assure the government of France, his only wish was, that some honorable place in the Constitution should be reserved for the Stadtholder and his children, and that he would take no part in the quarrel, unless an entire abolition of the Stadtholderate should be attempted. But his place was now occupied by Frederic William, his great nephew, a man of little understanding, much caprice, and very inconsiderate; and the Princess, his sister, although her husband was in arms against the legitimate authorities of the country, attempting to go to Amsterdam, for the purpose of exciting the mobs of that place, and being refused permission to pass a military post on the way, he put the Duke of Brunswick at the head of twenty thousand men, and made demonstrations of marching on Holland. The King of France hereupon declared, by his Chargé des Affaires

in Holland, that if the Prussian troops continued to menace Holland with an invasion, his Majesty, in quality of Ally, was determined to succor that province. In answer to this, Eden gave official information to Count Montmorin, that England must consider as at an end its convention with France relative to giving notice of its naval armaments, and that she was arming generally. War being now imminent, Eden, since Lord Aukland, questioned me on the effect of our treaty with France, in the case of a war, and what might be our dispositions. I told him frankly, and without hesitation, that our dispositions would be neutral, and that I thought it would be the interest of both these powers that we should be so; because, it would relieve both from all anxiety as to feeding their West India islands; that England, too, by suffering us to remain so, would avoid a heavy land war on our Continent, which might very much cripple her proceedings elsewhere; that our treaty, indeed, obliged us to receive into our ports the armed vessels of France, with their prizes, and to refuse admission to the prizes made on her by her enemies: that there was a clause, also, by which we guaranteed to France her American possessions, which might perhaps force us into the war, if these were attacked. "Then it will be war," said he, "for they will assuredly be attacked." Liston, at Madrid, about the same time, made the same inquiries of Carmichael. The Government of France then declared a determination to form a

camp of observation at Givet, commenced arming her marine, and named the Bailli de Suffrein their Generalissimo on the Ocean. She secretly engaged, also, in negotiations with Russia, Austria, and Spain, to form a quadruple alliance. The Duke of Brunswick having advanced to the confines of Holland, sent some of his officers to Givet, to reconnoitre the state of things there, and report them to him. He said afterwards, that "if there had been only a few tents at that place, he should not have advanced further, for that the King would not, merely for the interest of his sister, engage in a war with France." But, finding that there was not a single company there, he boldly entered the country, took their towns as fast as he presented himself before them, and advanced on Utrecht. The States had appointed the Rhingrave of Salm their Commander-in-Chief; a Prince without talents, without courage, and without principle. He might have held out in Utrecht for a considerable time, but he surrendered the place without firing a gun, literally ran away and hid himself, so that for months it was not known what had become of him. Amsterdam was then attacked, and capitulated. In the meantime, the negotiations for the quadruple alliance were proceeding favorably; but the secrecy with which they were attempted to be conducted, was penetrated by Fraser, Chargé d'Affaires of England at St. Petersburg, who instantly notified his court, and gave the alarm to Prussia. The King saw at once what

would be his situation, between the jaws of France, Austria, and Russia. In great dismay, he besought the court of London not to abandon him, sent Alvensleben to Paris to explain and soothe; and England, through the Duke of Dorset and Eden, renewed her conferences for accommodation. The Archbishop, who shuddered at the idea of war, and preferred a peaceful surrender of right to an armed vindication of it, received them with open arms, entered into cordial conferences, and a declaration, and counter-declaration, were cooked up at Versailles, and sent to London for approbation. They were approved there, reached Paris at one o'clock of the 27th, and were signed that night at Versailles. It was said and believed at Paris, that M. de Montmorin, literally "pleuroit comme un enfant," when obliged to sign this counter-declaration; so distressed was he by the dishonor of sacrificing the Patriots, after assurances so solemn of protection, and absolute encouragement to proceed. The Prince of Orange was reinstated in all his powers, now become regal. A great emigration of the Patriots took place; all were deprived of office, many exiled, and their property confiscated. They were received in France, and subsisted, for some time, on her bounty. Thus fell Holland, by the treachery of her Chief, from her honorable independence, to become a province of England; and so, also, her Stadtholder, from the high station of the first citizen of a free Republic, to be the servile Viceroy of a foreign

Sovereign. And this was effected by a mere scene of bullying and demonstration; not one of the parties, France, England, or Prussia, having ever really meant to encounter actual war for the interest of the Prince of Orange. But it had all the effect of a real and decisive war.

Our first essay, in America, to establish a federative government had fallen, on trial, very short of its object. During the war of Independence, while the pressure of an external enemy hooped us together, and their enterprises kept us necessarily on the alert, the spirit of the people, excited by danger, was a supplement to the Confederation, and urged them to zealous exertions, whether claimed by that instrument or not; but, when peace and safety were restored, and every man became engaged in useful and profitable occupation, less attention was paid to the calls of Congress. The fundamental defect of the Confederation was, that Congress was not authorized to act immediately on the people, and by its own officers. Their power was only requisitory, and these requisitions were addressed to the several Legislatures, to be by them carried into execution, without other coercion than the moral principle of duty. This allowed, in fact, a negative to every Legislature, on every measure proposed by Congress; a negative so frequently exercised in practice, as to benumb the action of the Federal government, and to render it inefficient in its general objects, and more especially in pecuniary and foreign

concerns. The want, too, of a separation of the Legislative, Executive, and Judiciary functions, worked disadvantageously in practice. Yet this state of things afforded a happy augury of the future march of our Confederacy, when it was seen that the good sense and good dispositions of the people, as soon as they perceived the incompetence of their first compact, instead of leaving its correction to insurrection and civil war, agreed, with one voice, to elect deputies to a general Convention, who should peaceably meet and agree on such a Constitution as "would ensure peace, justice, liberty, the common defence and general welfare."

This Convention met at Philadelphia on the 25th of May, '87. It sat with closed doors, and kept all its proceedings secret, until its dissolution on the 17th of September, when the results of its labors were published all together. I received a copy, early in November, and read and contemplated its provisions with great satisfaction. As not a member of the Convention, however, nor probably a single citizen of the Union, had approved it in all its parts, so I, too, found articles which I thought objectionable. The absence of express declarations ensuring freedom of religion, freedom of the press, freedom of the person under the uninterrupted protection of the Habeas corpus, and trial by jury in Civil as well as in Criminal cases, excited my jealousy; and the re-eligibility of the President for life, I quite disapproved. I expressed freely, in letters to my friends,

and most particularly to Mr. Madison and General Washington, my approbations and objections. How the good should be secured and the ill brought to rights, was the difficulty. To refer it back to a new Convention might endanger the loss of the whole. My first idea was, that the nine States first acting, should accept it unconditionally, and thus secure what in it was good, and that the four last should accept on the previous condition, that certain amendments should be agreed to; but a better course was devised, of accepting the whole, and trusting that the good sense and honest intentions of our citizens, would make the alterations which should be deemed necessary. Accordingly, all accepted, six without objection, and seven with recommendations of specified amendments. Those respecting the press, religion, and juries, with several others, of great value, were accordingly made; but the Habeas corpus was left to the discretion of Congress, and the amendment against the re-eligibility of the President was not proposed. My fears of that feature were founded on the importance of the office, on the fierce contentions it might excite among ourselves, if continuable for life, and the dangers of interference, either with money or arms, by foreign nations, to whom the choice of an American President might become interesting. Examples of this abounded in history; in the case of the Roman Emperors, for instance; of the Popes, while of any significance; of the German Emperors; the Kings of Poland, and the Deys of Barbary. I had

observed, too, in the feudal history, and in the recent instance, particularly, of the Stadtholder of Holland, how easily offices, or tenures for life, slide into inheritances. My wish, therefore, was, that the President should be elected for seven years, and be ineligible afterwards. This term I thought sufficient to enable him, with the concurrence of the Legislature, to carry through and establish any system of improvement he should propose for the general good. But the practice adopted, I think, is better, allowing his continuance for eight years, with a liability to be dropped at half way of the term, making that a period of probation. That his continuance should be restrained to seven years, was the opinion of the Convention at an earlier stage of its session, when it voted that term, by a majority of eight against two, and by a simple majority that he should be ineligible a second time. This opinion was confirmed by the House so late as July 26, referred to the Committee of detail, reported favorably by them, and changed to the present form by final vote, on the last day but one only of their session. Of this change, three States expressed their disapprobation; New York, by recommending an amendment, that the President should not be eligible a third time, and Virginia and North Carolina that he should not be capable of serving more than eight, in any term of sixteen years; and though this amendment has not been made in form, yet practice seems to have established it. The example of four Presidents voluntarily retiring at the end of their eighth

year, and the progress of public opinion, that the principle is salutary, have given it in practice the force of precedent and usage; insomuch, that, should a President consent to be a candidate for a third election, I trust he would be rejected, on this demonstration of ambitious views.

But there was another amendment, of which none of us thought at the time, and in the omission of which, lurks the germ that is to destroy this happy combination of National powers in the General government, for matters of National concern, and independent powers in the States, for what concerns the States severally. In England, it was a great point gained at the Revolution, that the commissions of the Judges, which had hitherto been during pleasure, should thenceforth be made during good behavior. A Judiciary, dependent on the will of the King, had proved itself the most oppressive of all tools, in the hands of that Magistrate. Nothing, then, could be more salutary, than a change there, to the tenure of good behavior; and the question of good behavior, left to the vote of a simple majority in the two Houses of Parliament. Before the Revolution, we were all good English Whigs, cordial in their free principles, and in their jealousies of their Executive Magistrate. These jealousies are very apparent, in all our state Constitutions; and, in the General government in this instance, we have gone even beyond the English caution, by requiring a vote of two-thirds, in one of the Houses, for removing a Judge; a vote so impos-

sible, where[1] any defence is made, before men of ordinary prejudices and passions, that our Judges are effectually independent of the nation. But this ought not to be. I would not, indeed, make them dependent on the Executive authority, as they formerly were in England; but I deem it indispensable to the continuance of this government, that they should be submitted to some practical and impartial control; and that this, to be imparted, must be compounded of a mixture of State and Federal authorities. It is not enough that honest men are appointed Judges. All know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the *esprit de corps*, of their peculiar maxim and creed, that "it is the office of a good Judge to enlarge his jurisdiction," and the absence of responsibility; and how can we expect impartial decision between the General government, of which they are themselves so eminent a part, and an individual State, from which they have nothing to hope or fear? We have seen, too, that contrary to all correct example, they are in the habit of going out of the question before them, to throw an anchor ahead, and grapple further hold for future advances of power. They are then, in fact, the corps of sappers and miners, steadily working to undermine the

[1] In the impeachment of Judge Pickering, of New Hampshire, a habitual and maniac drunkard, no defence was made. Had there been, the party vote of more than one-third of the Senate would have acquitted him.

independent rights of the States, and to consolidate all power in the hands of that government in which they have so important a freehold estate. But it is not by the consolidation, or concentration of powers, but by their distribution, that good government is effected. Were not this great country already divided into States, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every State again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed each by its individual proprietor. Were we directed from Washington when to sow, and when to reap, we should soon want bread. It is by this partition of cares, descending in gradation from general to particular, that the mass of human affairs may be best managed, for the good and prosperity of all. I repeat, that I do not charge the Judges with wilful and ill-intentioned error; but honest error must be arrested, where its toleration leads to public ruin. As, for the safety of society, we commit honest maniacs to Bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or in fortune; but it saves the Republic, which is the first and supreme law.

Among the debilities of the government of the

Confederation, no one was more distinguished or more distressing, than the utter impossibility of obtaining, from the States, the moneys necessary for the payment of debts, or even for the ordinary expenses of the government. Some contributed a little, some less, and some nothing; and the last furnished at length an excuse for the first to do nothing also. Mr. Adams, while residing at the Hague, had a general authority to borrow what sums might be requisite, for ordinary and necessary expenses. Interest on the public debt, and the maintenance of the diplomatic establishment in Europe, had been habitually provided in this way. He was now elected Vice-President of the United States, was soon to return to America, and had referred our bankers to me for future counsel, on our affairs in their hands. But I had no powers, no instructions, no means, and no familiarity with the subject. It had always been exclusively under his management, except as to occasional and partial deposits in the hands of Mr. Grand, banker in Paris, for special and local purposes. These last had been exhausted for some time, and I had fervently pressed the Treasury board to replenish this particular deposit, as Mr. Grand now refused to make further advances. They answered candidly, that no funds could be obtained until the new government should get into action, and have time to make its arrangements. Mr. Adams had received his appointment to the court of London, while engaged at Paris, with Dr. Franklin and my-

self, in the negotiations under our joint commissions. He had repaired thence to London, without returning to the Hague, to take leave of that government. He thought it necessary, however, to do so now, before he should leave Europe, and accordingly went there. I learned his departure from London, by a letter from Mrs. Adams, received on the very day on which he would arrive at the Hague. A consultation with him, and some provision for the future, was indispensable, while we could yet avail ourselves of his powers; for when they would be gone, we should be without resource. I was daily dunned by a Company who had formerly made a small loan to the United States, the principal of which was now become due; and our bankers in Amsterdam, had notified me that the interest on our general debt would be expected in June; that if we failed to pay it, it would be deemed an act of bankruptcy, and would effectually destroy the credit of the United States, and all future prospect of obtaining money there; that the loan they had been authorized to open, of which a third only was filled, had now ceased to get forward, and rendered desperate that hope of resource. I saw that there was not a moment to lose, and set out for the Hague on the second morning after receiving the information of Mr. Adams's journey. I went the direct road by Louvres, Senlis, Roye, Pont St. Maxence, Bois le duc, Gournay, Peronne, Cambray, Bouchain, Valenciennes, Mons, Bruxelles, Malines, Antwerp, Mordick, and Rotter-

dam, to the Hague, where I happily found Mr. Adams. He concurred with me at once in opinion, that something must be done, and that we ought to risk ourselves on doing it without instructions, to save the credit of the United States. We foresaw, that before the new government could be adopted, assembled, establish its financial system, get the money into the Treasury, and place it in Europe, considerable time would elapse; that, therefore, we had better provide at once, for the years '88, '89, and '90, in order to place our government at its ease, and our credit in security, during that trying interval. We set out, therefore, by the way of Leyden, for Amsterdam, where we arrived on the 10th. I had prepared an estimate, showing that

| | Florins. | |
|---|---|---|
| There would be necessary for the year '88 | | 531,937–10 |
| '89 | | 538,540 |
| '90 | | 473,540 |
| Total | | 1,544,017–10 |
| To meet this, the bankers had in hand | 79,268–2–8 | |
| and the unsold bonds would yield | 542,800 | |
| | | 622,068–2–8 |
| Leaving a deficit of | | 921,949–7–4 |
| We proposed then to borrow a million, yielding | | 920,000 |
| Which would leave a small deficiency of | | 1,949–7–4 |

Mr. Adams accordingly executed 1000 bonds, for 1000 florins each, and deposited them in the hands of our bankers, with instructions, however, not to issue them until Congress should ratify the measure.

This done, he returned to London, and I set out for Paris; and, as nothing urgent forbade it, I determined to return along the banks of the Rhine, to Strasburg, and thence strike off to Paris. I accordingly left Amsterdam on the 30th of March, and proceeded by Utrecht, Nimeguen, Cleves, Duysberg, Dusseldorf, Cologne, Bonne, Coblentz, Nassau, Hocheim, Frankfort, and made an excursion to Hanau, thence to Mayence, and another excursion to Rudesheim, and Johansberg; then by Oppenheim, Worms, and Manheim, making an excursion to Heidelberg, then by Spire, Carlsruh, Rastadt and Kelh, to Strasburg, where I arrived April the 16th, and proceeded again on the 18th, by Phalsbourg, Fenestrange, Dieuze, Moyenvie, Nancy, Toul, Ligny, Bar-le-duc, St. Diziers, Vitry, Chalons sur Marne, Epernay, Chateau Thierri, Meaux, to Paris, where I arrived on the 23d of April; and I had the satisfaction to reflect, that by this journey our credit was secured, the new government was placed at ease for two years to come, and that, as well as myself, relieved from the torment of incessant duns, whose just complaints could not be silenced by any means within our power.

A Consular Convention had been agreed on in '84, between Dr. Franklin and the French government, containing several articles, so entirely inconsistent with the laws of the several States, and the general spirit of our citizens, that Congress withheld their ratification, and sent it back to me, with

instructions to get those articles expunged, or modified so as to render them compatible with our laws. The Minister unwillingly released us from these concessions, which, indeed, authorized the exercise of powers very offensive in a free State. After much discussion, the Convention was reformed in a considerable degree, and was signed by the Count Montmorin and myself, on the 14th of November, '88; not, indeed, such as I would have wished, but such as could be obtained with good humor and friendship.

On my return from Holland, I found Paris as I had left it, still in high fermentation. Had the Archbishop, on the close of the Assembly of Notables, immediately carried into operation the measures contemplated, it was believed they would all have been registered by the Parliament; but he was slow, presented his edicts, one after another, and at considerable intervals, which gave time for the feelings excited by the proceedings of the Notables to cool off, new claims to be advanced, and a pressure to arise for a fixed constitution, not subject to changes at the will of the King. Nor should we wonder at this pressure, when we consider the monstrous abuses of power under which this people were ground to powder; when we pass in review the weight of their taxes, and the inequality of their distribution; the oppressions of the tithes, the tailles, the corvees, the gabelles, the farms and the barriers; the shackles on commerce by monopolies;

on industry by guilds and corporations; on the freedom of conscience, of thought, and of speech; on the freedom of the press by the Censure; and of the person by Lettres de Cachet; the cruelty of the Criminal code generally; the atrocities of the Rack; the venality of the Judges, and their partialities to the rich; the monopoly of Military honors by the Noblesse; the enormous expenses of the Queen, the Princes and the Court; the prodigalities of pensions; and the riches, luxury, indolence and immorality of the Clergy. Surely under such a mass of misrule and oppression, a people might justly press for a thorough reformation, and might even dismount their rough-shod riders, and leave them to walk on their own legs. The edicts, relative to the corvees and free circulation of grain, were first presented to the Parliament and registered; but those for the impôt territorial, and stamp tax, offered some time after, were refused by the Parliament, which proposed a call of the States General, as alone competent to their authorization. Their refusal produced a Bed of justice, and their exile to Troyes. The Advocates, however, refusing to attend them, a suspension in the administration of justice took place. The Parliament held out for awhile, but the ennui of their exile and absence from Paris, began at length to be felt, and some dispositions for compromise to appear. On their consent, therefore, to prolong some of the former taxes, they were recalled from exile, the King met them in session, November

19, '87, promised to call the States General in the year '92, and a majority expressed their assent to register an edict for successive and annual loans from 1788 to '92; but a protest being entered by the Duke of Orleans, and this encouraging others in a disposition to retract, the King ordered peremptorily the registry of the edict, and left the Assembly abruptly. The Parliament immediately protested, that the votes for the enregistry had not been legally taken, and that they gave no sanction to the loans proposed. This was enough to discredit and defeat them. Hereupon issued another edict, for the establishment of a cour plenière, and the suspension of all the Parliaments in the kingdom. This being opposed, as might be expected, by reclamations from all the Parliaments and Provinces, the King gave way, and by an edict of July 5th, '88, renounced his cour plenière, and promised the States General for the 1st of May, of the ensuing year; and the Archbishop, finding the times beyond his faculties, accepted the promise of a Cardinal's hat, was removed [September '88] from the Ministry, and M. Necker was called to the department of finance. The innocent rejoicings of the people of Paris on this change provoked the interference of an officer of the city guards, whose order for their dispersion not being obeyed, he charged them with fixed bayonets, killed two or three, and wounded many. This dispersed them for the moment, but they collected the next day in great numbers, burnt ten or

twelve guard-houses, killed two or three of the guards, and lost six or eight more of their own number. The city was hereupon put under Martial law, and after awhile the tumult subsided. The effect of this change of ministers, and the promise of the States General at an early day, tranquillized the nation. But two great questions now occurred. 1st. What proportion shall the number of deputies of the Tiers Etat bear to those of the Nobles and Clergy? And 2d, shall they sit in the same or in distinct apartments? M. Necker, desirous of avoiding himself these knotty questions, proposed a second call of the same Notables, and that their advice should be asked on the subject. They met, November 9, '88; and, by five bureaux against one, they recommended the forms of the States General of 1614; wherein the Houses were separate, and voted by orders, not by persons. But the whole nation declaring at once against this, and that the Tiers Etat should be, in numbers, equal to both the other orders, and the Parliament deciding for the same proportion, it was determined so to be, by a declaration of December 27th, '88. A Report of M. Necker, to the King, of about the same date, contained other very important concessions. 1. That the King could neither lay a new tax, nor prolong an old one. 2. It expressed a readiness to agree on the periodical meeting of the States. 3. To consult on the necessary restriction on Lettres de Cachet; and 4. How far the press might be made

free. 5. It admits that the States are to appropriate the public money; and 6. That Ministers shall be responsible for public expenditures. And these concessions came from the very heart of the King. He had not a wish but for the good of the nation; and for that object, no personal sacrifice would ever have cost him a moment's regret; but his mind was weakness itself, his constitution timid, his judgment null, and without sufficient firmness even to stand by the faith of his word. His Queen, too, haughty and bearing no contradiction, had an absolute ascendency over him; and around her were rallied the King's brother d'Artois, the court generally, and the aristocratic part of his Ministers, particularly Breteuil, Broglio, Vauguyon, Foulon, Luzerne, men whose principles of government were those of the age of Louis XIV. Against this host, the good counsels of Necker, Montmorin, St. Priest, although in unison with the wishes of the King himself, were of little avail. The resolutions of the morning, formed under their advice, would be reversed in the evening, by the influence of the Queen and court. But the hand of heaven weighed heavily indeed on the machinations of this junto; producing collateral incidents, not arising out of the case, yet powerfully co-exciting the nation to force a regeneration of its government, and overwhelming with accumulated difficulties, this liberticide resistance. For, while laboring under the want of money for even ordinary purposes, in a government which required a million

of livres a day, and driven to the last ditch by the universal call for liberty, there came on a winter of such severe cold, as was without example in the memory of man, or in the written records of history. The Mercury was at times 50° below the freezing point of Fahrenheit, and 22° below that of Reaumur. All out-door labor was suspended, and the poor, without the wages of labor, were, of course, without either bread or fuel. The government found its necessities aggravated by that of procuring immense quantities of fire-wood, and of keeping great fires at all the cross streets, around which the people gathered in crowds, to avoid perishing with cold. Bread, too, was to be bought, and distributed daily, gratis, until a relaxation of the season should enable the people to work; and the slender stock of bread stuff had for some time threatened famine, and had raised that article to an enormous price. So great, indeed, was the scarcity of bread, that, from the highest to the lowest citizen, the bakers were permitted to deal but a scanty allowance per head, even to those who paid for it; and, in cards of invitation to dine in the richest houses, the guest was notified to bring his own bread. To eke out the existence of the people, every person who had the means, was called on for a weekly subscription, which the Curés collected, and employed in providing messes for the nourishment of the poor, and vied with each other in devising such economical compositions of food, as would subsist the greatest

number with the smallest means. This want of bread had been foreseen for some time past, and M. de Montmorin had desired me to notify it in America, and that, in addition to the market price, a premium should be given on what should be brought from the United States. Notice was accordingly given, and produced considerable supplies. Subsequent information made the importations from America, during the months of March, April and May, into the Atlantic ports of France, amount to about twenty-one thousand barrels of flour, besides what went to other ports, and in other months; while our supplies to their West Indian islands relieved them also from that drain. This distress for bread continued till July.

Hitherto no acts of popular violence had been produced by the struggle for political reformation. Little riots, on ordinary incidents, had taken place as at other times, in different parts of the kingdom, in which some lives, perhaps a dozen or twenty, had been lost; but in the month of April, a more serious one occurred in Paris, unconnected, indeed, with the Revolutionary principle, but making part of the history of the day. The Fauxbourg St. Antoine is a quarter of the city inhabited entirely by the class of day laborers and journeymen in every line. A rumor was spread among them, that a great paper manufacturer, of the name of Reveillon, had proposed, on some occasion, that their wages should be lowered to fifteen sous a day. Inflamed at once into

rage, and without inquiring into its truth, they flew to his house in vast numbers, destroyed everything in it, and in his magazines and work-shops, without secreting, however, a pin's worth to themselves, and were continuing this work of devastation, when the regular troops were called in. Admonitions being disregarded, they were of necessity fired on, and a regular action ensued, in which about one hundred of them were killed, before the rest would disperse. There had rarely passed a year without such a riot, in some part or other of the Kingdom; and this is distinguished only as cotemporary with the Revolution, although not produced by it.

The States General were opened on the 5th of May, '89, by speeches from the King, the Garde des Sceaux, Lamoignon, and M. Necker. The last was thought to trip too lightly over the constitutional reformations which were expected. His notices of them in this speech, were not as full as in his previous 'Rapport au Roi.' This was observed, to his disadvantage; but much allowance should have been made for the situation in which he was placed, between his own counsels, and those of the ministers and party of the court. Overruled in his own opinions, compelled to deliver, and to gloss over those of his opponents, and even to keep their secrets, he could not come forward in his own attitude.

The composition of the Assembly, although equivalent, on the whole, to what had been expected, was something different in its elements. It had been

supposed, that a superior education would carry into the scale of the Commons a respectable portion of the Noblesse. It did so as to those of Paris, of its vicinity, and of the other considerable cities, whose greater intercourse with enlightened society had liberalized their minds, and prepared them to advance up to the measure of the times. But the Noblesse of the country, which constituted two-thirds of that body, were far in their rear. Residing constantly on their patrimonial feuds, and familiarized, by daily habit, with Seigneurial powers and practices, they had not yet learned to suspect their inconsistence with reason and right. They were willing to submit to equality of taxation, but not to descend from their rank and prerogatives to be incorporated in session with the Tiers État. Among the Clergy, on the other hand, it had been apprehended that the higher orders of the Hierarchy, by their wealth and connections, would have carried the elections generally; but it turned out, that in most cases, the lower clergy had obtained the popular majorities. These consisted of the Curés, sons of the peasantry, who had been employed to do all the drudgery of parochial services for ten, twenty, or thirty Louis a year; while their superiors were consuming their princely revenues in palaces of luxury and indolence.

The objects for which this body was convened, being of the first order of importance, I felt it very interesting to understand the views of the parties of

which it was composed, and especially the ideas prevalent as to the organization contemplated for their government. I went, therefore, daily from Paris to Versailles, and attended their debates, generally till the hour of adjournment. Those of the Noblesse were impassioned and tempestuous. They had some able men on both sides, actuated by equal zeal. The debates of the Commons were temperate, rational, and inflexibly firm. As preliminary to all other business, the awful questions came on, shall the States sit in one, or in distinct apartments? And shall they vote by heads or houses? The opposition was soon found to consist of the Episcopal order among the clergy, and two-thirds of the Noblesse; while the Tiers État were, to a man, united and determined. After various propositions of compromise had failed, the Commons undertook to cut the Gordian knot. The Abbe Sieyes, the most logical head of the nation, (author of the pamphlet "Qu'est ce que le Tiers État?" which had electrified that country, as Paine's Common Sense did us,) after an impressive speech on the 10th of June, moved that a last invitation should be sent to the Noblesse and Clergy, to attend in the hall of the States, collectively or individually, for the verification of powers, to which the Commons would proceed immediately, either in their presence or absence. This verification being finished, a motion was made, on the 15th, that they should constitute themselves a National Assembly; which was decided on the

17th, by a majority of four-fifths. During the debates on this question, about twenty of the Curés had joined them, and a proposition was made, in the chamber of the Clergy, that their whole body should join. This was rejected, at first, by a small majority only; but, being afterwards somewhat modified, it was decided affirmatively, by a majority of eleven. While this was under debate, and unknown to the court, to wit, on the 19th, a council was held in the afternoon, at Marly, wherein it was proposed that the King should interpose, by a declaration of his sentiments, in a *séance royale*. A form of declaration was proposed by Necker, which, while it censured, in general, the proceedings, both of the Nobles and Commons, announced the King's views, such as substantially to coincide with the Commons. It was agreed to in Council, the *séance* was fixed for the 22d, the meetings of the States were till then to be suspended, and everything, in the meantime, kept secret. The members, the next morning (the 20th) repairing to their house, as usual, found the doors shut and guarded, a proclamation posted up for a *séance royale* on the 22d, and a suspension of their meetings in the meantime. Concluding that their dissolution was now to take place, they repaired to a building called the "Jeu de paume" (or Tennis court) and there bound themselves by oath to each other, never to separate, of their own accord, till they had settled a constitution for the nation, on a solid basis, and, if separated by

force, that they would reassemble in some other place. The next day they met in the church of St. Louis, and were joined by a majority of the clergy. The heads of the Aristocracy saw that all was lost without some bold exertion. The King was still at Marly. Nobody was permitted to approach him but their friends. He was assailed by falsehoods in all shapes. He was made to believe that the Commons were about to absolve the army from their oath of fidelity to him, and to raise their pay. The court party were now all rage and desperation. They procured a committee to be held, consisting of the King and his Ministers, to which Monsieur and the Count d'Artois should be admitted. At this committee, the latter attacked M. Necker personally, arraigned his declaration, and proposed one which some of his prompters had put into his hands. M. Necker was brow-beaten and intimidated, and the King shaken. He determined that the two plans should be deliberated on the next day, and the *séance royale* put off a day longer. This encouraged a fiercer attack on M. Necker the next day. His draught of a declaration was entirely broken up, and that of the Count d'Artois inserted into it. Himself and Montmorin offered their resignation, which was refused; the Count d'Artois saying to M. Necker, "No, sir, you must be kept as the hostage; we hold you responsible for all the ill which shall happen." This change of plan was immediately whispered without doors. The No-

blesse were in triumph; the people in consternation. I was quite alarmed at this state of things. The soldiery had not yet indicated which side they should take, and that which they should support would be sure to prevail. I considered a successful reformation of government in France, as insuring a general reformation through Europe, and the resurrection, to a new life, of their people, now ground to dust by the abuses of the governing powers. I was much acquainted with the leading patriots of the Assembly. Being from a country which had successfully passed through a similar reformation, they were disposed to my acquaintance, and had some confidence in me. I urged, most strenuously, an immediate compromise; to secure what the government was now ready to yield, and trust to future occasions for what might still be wanting. It was well understood that the King would grant, at this time, 1. Freedom of the person by Habeas corpus: 2. Freedom of conscience: 3. Freedom of the press: 4. Trial by jury: 5. A representative Legislature: 6. Annual meetings: 7. The origination of laws: 8. The exclusive right of taxation and appropriation: and 9. The responsibility of Ministers; and with the exercise of these powers they could obtain, in future, whatever might be further necessary to improve and preserve their constitution. They thought otherwise, however, and events have proved their lamentable error. For, after thirty years of war, foreign and domestic, the loss of millions of lives, the prostration of private

happiness, and the foreign subjugation of their own country for a time, they have obtained no more, nor even that securely. They were unconscious of (for who could foresee?) the melancholy sequel of their well-meant perseverance; that their physical force would be usurped by a first tyrant to trample on the independence, and even the existence, of other nations: that this would afford a fatal example for the atrocious conspiracy of Kings against their people; would generate their unholy and homicide alliance to make common cause among themselves, and to crush, by the power of the whole, the efforts of any part to moderate their abuses and oppressions.

When the King passed, the next day, through the lane formed from the Chateau to the "Hotel des États," there was a dead silence. He was about an hour in the House, delivering his speech and declaration. On his coming out, a feeble cry of "vive le Roi" was raised by some chiidren, but the people remained silent and sullen. In the close of his speech, he had ordered that the members should follow him, and resume their deliberations the next day. The Noblesse followed him, and so did the Clergy, except about thirty, who, with the Tiers, remained in the room, and entered into deliberation. They protested against what the King had done, adhered to all their former proceedings, and resolved the inviolability of their own persons. An officer came, to order them out of the room in the King's name. "Tell those who sent you," said Mirabeau,

"that we shall not move hence but at our own will, or the point of the bayonet." In the afternoon, the people, uneasy, began to assemble in great numbers in the courts, and vicinities of the palace. This produced alarm. The Queen sent for M. Necker. He was conducted, amidst the shouts and acclamations of the multitude, who filled all the apartments of the palace. He was a few minutes only with the Queen, and what passed between them did not transpire. The King went out to ride. He passed through the crowd to his carriage, and into it, without being in the least noticed. As M. Necker followed him, universal acclamations were raised of "vive Monsieur Necker, vive le sauveur de la France opprimée." He was conducted back to his house with the same demonstrations of affection and anxiety. About two hundred deputies of the Tiers, catching the enthusiasm of the moment, went to his house, and extorted from him a promise that he would not resign. On the 25th, forty-eight of the Nobles joined the Tiers, and among them the Duke of Orleans. There were then with them one hundred and sixty-four members of the Clergy, although the minority of that body still sat apart, and called themselves the Chamber of the Clergy. On the 26th, the Archbishop of Paris joined the Tiers, as did some others of the Clergy and of the Noblesse.

These proceedings had thrown the people into violent ferment. It gained the soldiery, first of the French guards, extended to those of every other

denomination, except the Swiss, and even to the body guards of the King. They began to quit their barracks, to assemble in squads, to declare they would defend the life of the King, but would not be the murderers of their fellow-citizens. They called themselves the soldiers *of the nation*, and left now no doubt on which side they would be, in case of rupture. Similar accounts came in from the troops in other parts of the kingdom, giving good reason to believe they would side with their fathers and brothers, rather than with their officers. The operation of this medicine at Versailles was as sudden as it was powerful. The alarm there was so complete, that in the afternoon of the 27th, the King wrote, with his own hand, letters to the Presidents of the Clergy and Nobles, engaging them immediately to join the Tiers. These two bodies were debating, and hesitating, when notes from the Count d'Artois decided their compliance. They went in a body, and took their seats with the Tiers, and thus rendered the union of the orders in one chamber complete.

The Assembly now entered on the business of their mission, and first proceeded to arrange the order in which they would take up the heads of their constitution, as follows:

First, and as Preliminary to the whole, a general Declaration of the Rights of Man. Then, specifically, the Principles of the Monarchy; Rights of the Nation; Rights of the King; Rights of the Citizens; Organiza-

tion and Rights of the National Assembly; Forms necessary for the enactment of Laws; Organization and Functions of the Provincial and Municipal Assemblies; Duties and Limits of the Judiciary power; Functions and Duties of the Military power.

A Declaration of the Rights of Man, as the preliminary of their work, was accordingly prepared and proposed by the Marquis de La Fayette.

But the quiet of their march was soon disturbed by information that troops, and particularly the foreign troops, were advancing on Paris from various quarters. The King had probably been advised to this, on the pretext of preserving peace in Paris. But his advisers were believed to have other things in contemplation. The Marshal de Broglio was appointed to their command, a high-flying aristocrat, cool and capable of everything. Some of the French guards were soon arrested, under other pretexts, but really, on account of their dispositions in favor of the National cause. The people of Paris forced their prison, liberated them, and sent a deputation to the Assembly to solicit a pardon. The Assembly recommended peace and order to the people of Paris, the prisoners to the King, and asked from him the removal of the troops. His answer was negative and dry, saying they might remove themselves, if they pleased, to Noyons or Soissons. In the meantime, these troops, to the number of twenty or thirty thousand, had arrived, and were posted in, and between Paris and Versailles. The bridges and passes were

guarded. At three o'clock in the afternoon of the 11th of July, the Count de La Luzerne was sent to notify M. Necker of his dismission, and to enjoin him to retire instantly, without saying a word of it to anybody. He went home, dined, and proposed to his wife a visit to a friend, but went in fact to his country house at St. Ouen, and at midnight set out for Brussels. This was not known till the next day (the 12th,) when the whole Ministry was changed, except Villedeuil, of the domestic department, and Barenton, Garde des sceaux. The changes were as follows:

The Baron de Breteuil, President of the Council of Finance; de la Galaisiere, Comptroller General, in the room of M. Necker; the Marshal de Broglio, Minister of War, and Foulon under him, in the room of Puy-Segur; the Duke de la Vauguyon, Minister of Foreign Affairs, instead of the Count de Montmorin; de La Porte, Minister of Marine, in place of the Count de La Luzerne; St. Priest was also removed from the Council. Luzerne and Puy-Segur had been strongly of the Aristocratic party in the Council, but they were not considered equal to the work now to be done. The King was now completely in the hands of men, the principal among whom had been noted, through their lives, for the Turkish despotism of their characters, and who were associated around the King, as proper instruments for what was to be executed. The news of this change began to be known at Paris, about one or two o'clock. In the afternoon, a body of about one hundred German

cavalry were advanced, and drawn up in the Place Louis XV., and about two hundred Swiss posted at a little distance in their rear. This drew people to the spot, who thus accidentally found themselves in front of the troops, merely at first as spectators; but, as their numbers increased, their indignation rose. They retired a few steps, and posted themselves on and behind large piles of stones, large and small, collected in that place for a bridge, which was to be built adjacent to it. In this position, happening to be in my carriage on a visit, I passed through the lane they had formed, without interruption. But the moment after I had passed, the people attacked the cavalry with stones. They charged, but the advantageous position of the people, and the showers of stones, obliged the horse to retire, and quit the field altogether, leaving one of their number on the ground, and the Swiss in the rear not moving to their aid. This was the signal for universal insurrection, and this body of cavalry, to avoid being massacred, retired towards Versailles. The people now armed themselves with such weapons as they could find in armorer's shops, and private houses, and with bludgeons; and were roaming all night, through all parts of the city, without any decided object. The next day (the 13th,) the Assembly pressed on the King to send away the troops, to permit the Bourgeoisie of Paris to arm for the preservation of order in the city, and offered to send a deputation from their body to tranquillize them; but their propositions were re-

fused. A committee of magistrates and electors of the city were appointed by those bodies, to take upon them its government. The people, now openly joined by the French guards, forced the prison of St. Lazare, released all the prisoners, and took a great store of corn, which they carried to the corn-market. Here they got some arms, and the French guards began to form and train them. The city-committee determined to raise forty-eight thousand Bourgeoise, or rather to restrain their numbers to forty-eight thousand. On the 14th, they sent one of their members (Monsieur de Corny) to the Hotel des Invalides, to ask arms for their Garde Bourgeoise. He was followed by, and he found there, a great collection of people. The Governor of the Invalids came out, and represented the impossibility of his delivering arms, without the orders of those from whom he received them. De Corny advised the people then to retire, and retired himself; but the people took possession of the arms. It was remarkable, that not only the Invalids themselves made no opposition, but that a body of five thousand foreign troops, within four hundred yards, never stirred. M. de Corny, and five others, were then sent to ask arms of M. de Launay, Governor of the Bastile. They found a great collection of people already before the place, and they immediately planted a flag of truce, which was answered by a like flag hoisted on the parapet. The deputation prevailed on the people to fall back a little, advanced

themselves to make their demand of the Governor, and in that instant, a discharge from the Bastile killed four persons of those nearest to the deputies. The deputies retired. I happened to be at the house of M. de Corny, when he returned to it, and received from him a narrative of these transactions. On the retirement of the deputies, the people rushed forward, and almost in an instant, were in possession of a fortification of infinite strength, defended by one hundred men, which in other times had stood several regular sieges, and had never been taken. How they forced their entrance has never been explained. They took all the arms, discharged the prisoners, and such of the garrison as were not killed in the first moment of fury; carried the Governor and Lieutenant Governor, to the Place de Grève, (the place of public execution,) cut off their heads, and sent them through the city, in triumph, to the Palais royal. About the same instant, a treacherous correspondence having been discovered in M. de Flesselles, Prevôt des Marchands, they seized him in the Hotel de Ville, where he was in the execution of his office, and cut off his head. These events, carried imperfectly to Versailles, were the subject of two successive deputations from the Assembly to the King, to both of which he gave dry and hard answers; for nobody had as yet been permitted to inform him, truly and fully, of what had passed at Paris. But at night, the Duke de Liancourt forced his way into the King's bed chamber, and obliged him to hear a full and ani-

mated detail of the disasters of the day in Paris. He went to bed fearfully impressed. The decapitation of de Launay worked powerfully through the night on the whole Aristocratic party; insomuch, that in the morning, those of the greatest influence on the Count d'Artois, represented to him the absolute necessity that the King should give up everything to the Assembly. This according with the dispositions of the King, he went about eleven o'clock, accompanied only by his brothers, to the Assembly, and there read to them a speech, in which he asked their interposition to re-establish order. Although couched in terms of some caution, yet the manner in which it was delivered, made it evident that it was meant as a surrender at discretion. He returned to the Chateau on foot, accompanied by the Assembly. They sent off a deputation to quiet Paris, at the head of which was the Marquis de La Fayette, who had, the same morning, been named Commandant en chef of the Milice Bourgeoise; and Monsieur Bailly, former President of the States General, was called for as Prevôt des Marchands. The demolition of the Bastile was now ordered and begun. A body of the Swiss guards, of the regiment of Ventimille, and the city horse guards joined the people. The alarm at Versailles increased. The foreign troops were ordered off instantly. Every Minister resigned. The King confirmed Bailly as Prevôt des Marchands, wrote to M. Necker, to recall him, sent his letter open to the Assembly, to be forwarded by them, and invited

them to go with him to Paris the next day, to satisfy the city of his dispositions; and that night, and the next morning, the Count d'Artois, and M. de Montesson, a deputy connected with him, Madame de Polignac, Madame de Guiche, and the Count de Vaudreuil, favorites of the Queen, the Abbé de Vermont her confessor, the Prince of Condé, and Duke of Bourbon fled. The King came to Paris, leaving the Queen in consternation for his return. Omitting the less important figures of the procession, the King's carriage was in the centre; on each side of it, the Assembly, in two ranks a foot; at their head the Marquis de La Fayette, as Commander-in-chief, on horseback, and Bourgeois guards before and behind. About sixty thousand citizens, of all forms and conditions, armed with the conquests of the Bastile and Invalids, as far as they would go, the rest with pistols, swords, pikes, pruning-hooks, scythes, &c., lined all the streets through which the procession passed, and with the crowds of people in the streets, doors, and windows, saluted them everywhere with the cries of "vive la nation," but not a single "vive le Roi" was heard. The King stopped at the Hotel de Ville. There M. Bailly presented, and put into his hat, the popular cockade, and addressed him. The King being unprepared, and unable to answer, Bailly went to him, gathered from him some scraps of sentences, and made out an answer, which he delivered to the audience, as from the King. On their return, the popular cries were "vive le Roi et la nation." He

was conducted by a garde Bourgeoise to his palace at Versailles, and thus concluded an "amende honorable," as no sovereign ever made, and no people ever received.

And here, again, was lost another precious occasion of sparing to France the crimes and cruelties through which she has since passed, and to Europe, and finally America, the evils which flowed on them also from this mortal source. The King was now become a passive machine in the hands of the National Assembly, and had he been left to himself, he would have willingly acquiesced in whatever they should devise as best for the nation. A wise constitution would have been formed, hereditary in his line, himself placed at its head, with powers so large as to enable him to do all the good of his station, and so limited, as to restrain him from its abuse. This he would have faithfully administered, and more than this, I do not believe, he ever wished. But he had a Queen of absolute sway over his weak mind and timid virtue, and of a character the reverse of his in all points. This angel, as gaudily painted in the rhapsodies of Burke, with some smartness of fancy, but no sound sense, was proud, disdainful of restraint, indignant at all obstacles to her will, eager in the pursuit of pleasure, and firm enough to hold to her desires, or perish in their wreck. Her inordinate gambling and dissipations, with those of the Count d'Artois, and others of her *clique*, had been a sensible item in the exhaustion of the treasury,

which called into action the reforming hand of the nation; and her opposition to it, her inflexible perverseness, and dauntless spirit, led herself to the Guillotine, drew the King on with her, and plunged the world into crimes and calamities which will forever stain the pages of modern history. I have ever believed, that had there been no Queen, there would have been no revolution. No force would have been provoked, nor exercised. The King would have gone hand in hand with the wisdom of his sounder counsellors, who, guided by the increased lights of the age, wished only, with the same pace, to advance the principles of their social constitution. The deed which closed the mortal course of these sovereigns, I shall neither approve nor condemn. I am not prepared to say, that the first magistrate of a nation cannot commit treason against his country, or is unamenable to its punishment; nor yet, that where there is no written law, no regulated tribunal, there is not a law in our hearts, and a power in our hands, given for righteous employment in maintaining right, and redressing wrong. Of those who judged the King, many thought him wilfully criminal; many, that his existence would keep the nation in perpetual conflict with the horde of Kings who would war against a generation which might come home to themselves, and that it were better that one should die than all. I should not have voted with this portion of the legislature. I should have shut up the Queen in a convent, putting harm out of her power

and placed the King in his station, investing him with limited powers, which, I verily believe, he would have honestly exercised, according to the measure of his understanding. In this way, no void would have been created, courting the usurpation of a military adventurer, nor occasion given for those enormities which demoralized the nations of the world, and destroyed, and is yet to destroy, millions and millions of its inhabitants. There are three epochs in history, signalized by the total extinction of national morality. The first was of the successors of Alexander, not omitting himself: The next, the successors of the first Cæsar: The third, our own age. This was begun by the partition of Poland, followed by that of the treaty of Pilnitz; next the conflagration of Copenhagen; then the enormities of Bonaparte, partitioning the earth at his will, and devastating it with fire and sword; now the conspiracy of Kings, the successors of Bonaparte, blasphemously calling themselves the Holy Alliance, and treading in the footsteps of their incarcerated leader; not yet, indeed, usurping the government of other nations, avowedly and in detail, but controlling by their armies the forms in which they will permit them to be governed; and reserving, *in petto*, the order and extent of the usurpations further meditated. But I will return from a digression, anticipated, too, in time, into which I have been led by reflection on the criminal passions which refused to the world a favorable occasion of saving it from the afflictions it has since suffered.

M. Necker had reached Basle before he was overtaken by the letter of the King, inviting him back to resume the office he had recently left. He returned immediately, and all the other Ministers having resigned, a new administration was named, to wit: St. Priest and Montmorin were restored; the Archbishop of Bordeaux was appointed Garde des sceaux, La Tour du Pin, Minister of War; La Luzerne, Minister of Marine. This last was believed to have been effected by the friendship of Montmorin; for although differing in politics, they continued firm in friendship, and Luzerne, although not an able man, was thought an honest one. And the Prince of Bauvau was taken into the Council.

Seven Princes of the blood Royal, six ex-Ministers, and many of the high Noblesse, having fled, and the present Ministers, except Luzerne, being all of the popular party, all the functionaries of government moved, for the present, in perfect harmony.

In the evening of August the 4th, and on the motion of the Viscount de Noailles, brother in law of La Fayette, the Assembly abolished all titles of rank, all the abusive privileges of feudalism, the tithes and casuals of the Clergy, all Provincial privileges, and, in fine, the Feudal regimen generally. To the suppression of tithes, the Abbé Sieyes was vehemently opposed; but his learned and logical arguments were unheeded, and his estimation lessened by a contrast of his egoism (for he was beneficed on them), with the generous abandonment of

rights by the other members of the Assembly. Many days were employed in putting into the form of laws, the numerous demolitions of ancient abuses; which done, they proceeded to the preliminary work of a Declaration of Rights. There being much concord of sentiment on the elements of this instrument, it was liberally framed, and passed with a very general approbation. They then appointed a Committee for the "reduction of a projet" of a constitution, at the head of which was the Archbishop of Bordeaux. I received from him, as chairman of the Committee, a letter of July 20th, requesting me to attend and assist at their deliberations; but I excused myself, on the obvious considerations, that my mission was to the King as Chief Magistrate of the nation, that my duties were limited to the concerns of my own country, and forbade me to intermeddle with the internal transactions of that, in which I had been received under a specific character only. Their plan of a constitution was discussed in sections, and so reported from time to time, as agreed to by the Committee. The first respected the general frame of the government; and that this should be formed into three departments, Executive, Legislative and Judiciary, was generally agreed. But when they proceeded to subordinate developments, many and various shades of opinion came into conflict, and schism, strongly marked, broke the Patriots into fragments of very discordant principles. The first question, Whether there should

be a King? met with no open opposition; and it was readily agreed, that the government of France should be monarchical and hereditary. Shall the King have a negative on the laws? shall that negative be absolute, or suspensive only? Shall there be two Chambers of Legislation? or one only? If two, shall one of them be hereditary? or for life? or for a fixed term? and named by the King? or elected by the people? These questions found strong differences of opinion, and produced repulsive combinations among the Patriots. The Aristocracy was cemented by a common principle, of preserving the ancient regime, or whatever should be nearest to it. Making this their polar star, they moved in phalanx, gave preponderance on every question to the minorities of the Patriots, and always to those who advocated the least change. The features of the new constitution were thus assuming a fearful aspect, and great alarm was produced among the honest Patriots by these dissensions in their ranks. In this uneasy state of things, I received one day a note from the Marquis de La Fayette, informing me that he should bring a party of six or eight friends to ask a dinner of me the next day. I assured him of their welcome. When they arrived, they were La Fayette himself, Duport, Barnave, Alexander la Meth, Blacon, Mounier, Maubourg, and Dagout. These were leading Patriots, of honest but differing opinions, sensible of the necessity of effecting a coalition by mutual sacrifices, knowing each other, and not afraid, therefore,

to unbosom themselves mutually. This last was a material principle in the selection. With this view, the Marquis had invited the conference, and had fixed the time and place inadvertently, as to the embarrassment under which it might place me. The cloth being removed, and wine set on the table, after the American manner, the Marquis introduced the objects of the conference, by summarily reminding them of the state of things in the Assembly, the course which the principles of the Constitution were taking, and the inevitable result, unless checked by more concord among the Patriots themselves. He observed, that although he also had his opinion, he was ready to sacrifice it to that of his brethren of the same cause; but that a common opinion must now be formed, or the Aristocracy would carry everything, and that, whatever they should now agree on, he, at the head of the National force, would maintain. The discussions began at the hour of four, and were continued till ten o'clock in the evening; during which time, I was a silent witness to a coolness and candor of argument, unusual in the conflicts of political opinion; to a logical reasoning, and chaste eloquence, disfigured by no gaudy tinsel of rhetoric or declamation, and truly worthy of being placed in parallel with the finest dialogues of antiquity, as handed to us by Xenophon, by Plato and Cicero. The result was, that the King should have a suspensive veto on the laws, that the legislature should be composed of a single body only,

and that to be chosen by the people. This Concordate decided the fate of the constitution. The Patriots all rallied to the principles thus settled, carried every question agreeably to them, and reduced the Aristocracy to insignificance and impotence. But duties of exculpation were now incumbent on me. I waited on Count Montmorin the next morning, and explained to him, with truth and candor, how it had happened that my house had been made the scene of conferences of such a character. He told me, he already knew everything which had passed, that so far from taking umbrage at the use made of my house on that occasion, he earnestly wished I would habitually assist at such conferences, being sure I should be useful in moderating the warmer spirits, and promoting a wholesome and practicable reformation only. I told him, I knew too well the duties I owed to the King, to the nation, and to my own country, to take any part in councils concerning their internal government, and that I should persevere, with care, in the character of a neutral and passive spectator, with wishes only, and very sincere ones, that those measures might prevail which would be for the greatest good of the nation. I have no doubts, indeed, that this conference was previously known and approved by this honest Minister, who was in confidence and communication with the Patriots, and wished for a reasonable reform of the Constitution.

Here I discontinue my relation of the French

Revolution. The minuteness with which I have so far given its details, is disproportioned to the general scale of my narrative. But I have thought it justified by the interest which the whole world must take in this Revolution. As yet, we are but in the first chapter of its history. The appeal to the rights of man, which had been made in the United States, was taken up by France, first of the European nations. From her, the spirit has spread over those of the South. The tyrants of the North have allied indeed against it; but it is irresistible. Their opposition will only multiply its millions of human victims; their own satellites will catch it, and the condition of man through the civilized world, will be finally and greatly ameliorated. This is a wonderful instance of great events from small causes. So inscrutable is the arrangement of causes and consequences in this world, that a two-penny duty on tea, unjustly imposed in a sequestered part of it, changes the condition of all its inhabitants. I have been more minute in relating the early transactions of this regeneration, because I was in circumstances peculiarly favorable for a knowledge of the truth. Possessing the confidence and intimacy of the leading Patriots, and more than all, of the Marquis Fayette, their head and Atlas, who had no secrets from me, I learned with correctness the views and proceedings of that party; while my intercourse with the diplomatic missionaries of Europe at Paris, all of them with the court, and eager in prying into its councils and pro-

ceedings, gave me a knowledge of these also. My information was always, and immediately committed to writing, in letters to Mr. Jay, and often to my friends, and a recurrence to these letters now insures me against errors of memory.

These opportunities of information ceased at this period, with my retirement from this interesting scene of action. I had been more than a year soliciting leave to go home, with a view to place my daughters in the society and care of their friends, and to return for a short time to my station at Paris. But the metamorphosis through which our government was then passing from its Chrysalid to its Organic form suspended its action in a great degree; and it was not till the last of August, that I received the permission I had asked. And here, I cannot leave this great and good country, without expressing my sense of its pre-eminence of character among the nations of the earth. A more benevolent people I have never known, nor greater warmth and devotedness in their select friendships. Their kindness and accommodation to strangers is unparalleled, and the hospitality of Paris is beyond anything I had conceived to be practicable in a large city. Their eminence, too, in science, the communicative dispositions of their scientific men, the politeness of the general manners, the ease and vivacity of their conversation, give a charm to their society, to be found nowhere else. In a comparison of this, with other countries, we have the proof of primacy,

which was given to Themistocles, after the battle of Salamis. Every general voted to himself the first reward of valor, and the second to Themistocles. So, ask the travelled inhabitant of any nation, in what country on earth would you rather live?—Certainly, in my own, where are all my friends, my relations, and the earliest and sweetest affections and recollections of my life. Which would be your second choice? France.

On the 26th of September I left Paris for Havre, where I was detained by contrary winds until the 8th of October. On that day, and the 9th, I crossed over to Cowes, where I had engaged the Clermont, Capt. Colley, to touch for me. She did so; but here again we were detained by contrary winds, until the 22d, when we embarked, and landed at Norfolk on the 23d of November. On my way home, I passed some days at Eppington, in Chesterfield, the residence of my friend and connection, Mr. Eppes; and, while there, I received a letter from the President, General Washington, by express, covering an appointment to be Secretary of State.[1] I received it with real regret. My wish had been to return to Paris, where I had left my household establishment, as if there myself, and to see the end of the Revolution, which I then thought would be certainly and happily closed in less than a year. I then meant to return home, to withdraw from political life, into which I had been

[1 See Appendix, note H.]

impressed by the circumstances of the times, to sink into the bosom of my family and friends, and devote myself to studies more congenial to my mind. In my answer of December 15th, I expressed these dispositions candidly to the President, and my preference of a return to Paris; but assured him, that if it was believed I could be more useful in the administration of the government, I would sacrifice my own inclinations without hesitation, and repair to that destination; this I left to his decision. I arrived at Monticello on the 23d of December, where I received a second letter from the President, expressing his continued wish that I should take my station there, but leaving me still at liberty to continue in my former office, if I could not reconcile myself to that now proposed. This silenced my reluctance, and I accepted the new appointment.

In the interval of my stay at home, my eldest daughter had been happily married to the eldest son of the Tuckahoe branch of Randolphs, a young gentleman of genius, science, and honorable mind, who afterwards filled a dignified station in the General Government, and the most dignified in his own State. I left Monticello on the first of March, 1790, for New York. At Philadelphia I called on the venerable and beloved Franklin. He was then on the bed of sickness from which he never rose. My recent return from a country in which he had left so many friends, and the perilous convulsions to

which they had been exposed, revived all his anxieties to know what part they had taken, what had been their course, and what their fate. He went over all in succession, with a rapidity and animation almost too much for his strength. When all his inquiries were satisfied, and a pause took place, I told him I had learned with much pleasure that, since his return to America, he had been occupied in preparing for the world the history of his own life. I cannot say much of that, said he; but I will give you a sample of what I shall leave; and he directed his little grandson (William Bache) who was standing by the bedside, to hand him a paper from the table, to which he pointed. He did so; and the Doctor putting it into my hands, desired me to take it and read it at my leisure. It was about a quire of folio paper, written in a large and running hand, very like his own. I looked into it slightly, then shut it, and said I would accept his permission to read it, and would carefully return it. He said, "no, keep it." Not certain of his meaning, I again looked into it, folded it for my pocket, and said again, I would certainly return it. "No," said he, "keep it." I put it into my pocket, and shortly after took leave of him. He died on the 17th of the ensuing month of April; and as I understood that he had bequeathed all his papers to his grandson, William Temple Franklin, I immediately wrote to Mr. Franklin, to inform him I possessed this paper, which I should consider as his property,

and would deliver to his order. He came on immediately to New York, called on me for it, and I delivered it to him. As he put it into his pocket, he said carelessly, he had either the original, or another copy of it, I do not recollect which. This last expression struck my attention forcibly, and for the first time suggested to me the thought that Dr. Franklin had meant it as a confidential deposit in my hands, and that I had done wrong in parting from it. I have not yet seen the collection he published of Dr. Franklin's works, and, therefore, know not if this is among them. I have been told it is not. It contained a narrative of the negotiations between Dr. Franklin and the British Ministry, when he was endeavoring to prevent the contest of arms which followed. The negotiation was brought about by the intervention of Lord Howe and his sister, who, I believe, was called Lady Howe, but I may misremember her title. Lord Howe seems to have been friendly to America, and exceedingly anxious to prevent a rupture. His intimacy with Dr. Franklin, and his position with the Ministry, induced him to undertake a mediation between them; in which his sister seemed to have been associated. They carried from one to the other, backwards and forwards, the several propositions and answers which passed, and seconded with their own intercessions, the importance of mutual sacrifices, to preserve the peace and connection of the two countries. I remember that Lord North's answers were dry,

unyielding, in the spirit of unconditional submission, and betrayed an absolute indifference to the occurrence of a rupture; and he said to the mediators distinctly, at last, that "a rebellion was not to be deprecated on the part of Great Britain; that the confiscations it would produce would provide for many of their friends." This expression was reported by the mediators to Dr. Franklin, and indicated so cool and calculated a purpose in the Ministry, as to render compromise hopeless, and the negotiation was discontinued. If this is not among the papers published, we ask, what has become of it? I delivered it with my own hands, into those of Temple Franklin. It certainly established views so atrocious in the British government, that its suppression would, to them, be worth a great price. But could the grandson of Dr. Franklin be, in such degree, an accomplice in the parricide of the memory of his immortal grandfather? The suspension for more than twenty years of the general publication, bequeathed and confided to him, produced, for awhile, hard suspicions against him; and if, at last, all are not published, a part of these suspicions may remain with some.

I arrived at New York on the 21st of March, where Congress was in session.

# APPENDIX.

## [Note A.]

### LETTER TO JOHN SAUNDERSON, ESQ.

Monticello, August 31, 1820.

Sir,

Your letter of the 19th was received in due time, and I wish it were in my power to furnish you more fully, than in the enclosed paper, with materials for the biography of George Wythe; but I possess none in writing, am very distant from the place of his birth and early life, and know not a single person in that quarter from whom inquiry could be made, with the expectation of collecting anything material. Add to this, that feeble health disables me, almost, from writing; and entirely from the labor of going into difficult research. I became acquainted with Mr. Wythe when he was about thirty-five years of age. He directed my studies in the law, led me into business, and continued, until death, my most affectionate friend. A close intimacy with him, during that period of forty odd years, the most important of his life, enables me to state its leading facts, which, being of my own knowledge, I vouch their truth. Of what precedes that period, I speak from hearsay only, in which there may be error, but of little account, as the character of the facts will themselves manifest. In the epoch of his birth, I may

err a little, stating that from the recollection of a particular incident, the date of which, within a year or two, I do not distinctly remember. These scanty outlines you will be able, I hope, to fill up from other information, and they may serve you, sometimes, as landmarks to distinguish truth from error, in what you hear from others. The exalted virtue of the man will also be a polar star to guide you in all matters which may touch that element of his character. But on that you will receive imputation from no man; for, as far as I know, he never had an enemy. Little as I am able to contribute to the just reputation of this excellent man, it is the act of my life most gratifying to my heart; and leaves me only to regret that a waning memory can do no more.

Of Mr. Hancock I can say nothing, having known him only in the chair of Congress. Having myself been the youngest man but one in that body, the disparity of age prevented any particular intimacy. But of him there can be no difficulty in obtaining full information in the North.

I salute you, Sir, with sentiments of great respect,

TH. JEFFERSON.

### NOTES FOR THE BIOGRAPHY OF GEORGE WYTHE.

George Wythe was born about the year 1727, or 1728, of a respectable family in the County of Elizabeth City, on the shores of the Chesapeake. He inherited, from his father, a fortune sufficient for independence and ease. He had not the benefit of a

regular education in the schools, but acquired a good one of himself, and without assistance; insomuch, as to become the best Latin and Greek scholar in the State. It is said, that while reading the Greek Testament, his mother held an English one, to aid him in rendering the Greek text conformably with that. He also acquired, by his own reading, a good knowledge of Mathematics, and of Natural and Moral Philosophy. He engaged in the study of the law under the direction of a Mr. Lewis, of that profession, and went early to the bar of the General Court, then occupied by men of great ability, learning, and dignity in their profession. He soon became eminent among them, and, in process of time, the first at the bar, taking into consideration his superior learning, correct elocution, and logical style of reasoning; for in pleading he never indulged himself with an useless or declamatory thought or word; and became as distinguished by correctness and purity of conduct in his profession, as he was by his industry and fidelity to those who employed him. He was early elected to the House of Representatives, then called the House of Burgesses, and continued in it until the Revolution. On the first dawn of that, instead of higgling on half-way principles, as others did who feared to follow their reason, he took his stand on the solid ground that the only link of political union between us and Great Britain, was the identity of our Executive; that that nation and its Parliament had no more authority over us,

than we had over them, and that we were co-ordinate nations with Great Britain and Hanover.

In 1774, he was a member of a Committee of the House of Burgesses, appointed to prepare a Petition to the King, a Memorial to the House of Lords, and a Remonstrance to the House of Commons, on the subject of the proposed Stamp Act. He was made draughtsman of the last, and, following his own principles, he so far overwent the timid hesitations of his colleagues, that his draught was subjected by them to material modifications; and, when the famous Resolutions of Mr. Henry, in 1775, were proposed, it was not on any difference of principle that they were opposed by Wythe, Randolph, Pendleton, Nicholas, Bland, and other worthies, who had long been the habitual leaders of the House; but because those papers of the preceding session had already expressed the same sentiments and assertions of right, and that an answer to them was yet to be expected.

In August, 1775, he was appointed a member of Congress, and in 1776, signed the Declaration of Independence, of which he had, in debate, been an eminent supporter. And subsequently, in the same year, he was appointed, by the Legislature of Virginia, one of a Committee to revise the laws of the State, as well of British as of Colonial enactment, and to prepare bills for re-enacting them, with such alterations as the change in the form and principles of the government, and other circumstances, re-

quired; and of this work, he executed the period commencing with the revolution in England, and ending with the establishment of the new government here; excepting the Acts for regulating descents, for religious freedom, and for proportioning crimes and punishments. In 1777, he was chosen Speaker of the House of Delegates, being of distinguished learning in Parliamentary law and proceedings; and towards the end of the same year, he was appointed one of the three Chancellors, to whom that department of the Judiciary was confided, on the first organization of the new government. On a subsequent change of the form of that court, he was appointed sole Chancellor, in which office he continued to act until his death, which happened in June, 1806, about the seventy-eighth or seventy-ninth year of his age.

Mr. Wythe had been twice married: first, I believe, to a daughter of Mr. Lewis, with whom he had studied law, and afterwards to a Miss Taliaferro, of a wealthy and respectable family in the neighborhood of Williamsburg; by neither of whom did he leave issue.

No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible, and his justice exact; of warm patriotism, and, devoted as he was to liberty, and the natural and equal rights of man, he might truly be called the Cato of his country, without the avarice of the Roman; for a

more disinterested person never lived. Temperance and regularity in all his habits, gave him general good health, and his unaffected modesty and suavity of manners endeared him to every one. He was of easy elocution, his language chaste, methodical in the arrangement of his matter, learned and logical in the use of it, and of great urbanity in debate; not quick of apprehension, but, with a little time, profound in penetration, and sound in conclusion. In his philosophy he was firm, and neither troubling, nor perhaps trusting, any one with his religious creed, he left the world to the conclusion, that that religion must be good which could produce a life of such exemplary virtue.

His stature was of the middle size, well formed and proportioned, and the features of his face were manly, comely, and engaging. Such was George Wythe, the honor of his own, and the model of future times.

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## [Note B.]

### LETTER TO SAMUEL A. WELLS, ESQ.

Monticello, May 12, 1819.

Sir,

An absence of some time at an occasional and distant residence, must apologize for the delay in acknowledging the receipt of your favor of April 12; and, candor obliges me to add, that it has been somewhat extended by an aversion to writing, as well as

to calls on my memory for facts so much obliterated from it by time, as to lessen my own confidence in the traces which seem to remain. One of the inquiries in your letter, however, may be answered without an appeal to the memory. It is that respecting the question, whether committees of correspondence originated in Virginia, or Massachusetts? on which you suppose me to have claimed it for Virginia; but certainly I have never made such a claim. The idea, I suppose, has been taken up from what is said in Wirt's history of Mr. Henry, page 87, and from an inexact attention to its precise terms. It is there said, "this House (of Burgesses, of Virginia) had the merit of originating that powerful engine of resistance, corresponding committees *between the legislatures of the different colonies*." That the fact, as here expressed, is true, your letter bears witness, when it says, that the resolutions of Virginia, for this purpose, were transmitted to the speakers of the different assemblies, and by that of Massachusetts, was laid, at the next session, before that body, who appointed a committee for the specified object: adding, "thus, in Massachusetts, there were two committees of correspondence, one chosen by the people, the other appointed by the House of Assembly; in the former, Massachusetts preceded Virginia; in the latter, Virginia preceded Massachusetts." To the origination of committees for the interior correspondence between the counties and towns of a State, I know of no claim on the part of Virginia; and cer-

tainly none was ever made by myself. I perceive, however, one error, into which memory had led me. Our committee for national correspondence, was appointed in March, '73, and I well remember, that going to Williamsburg, in the month of June following, Peyton Randolph, our Chairman, told me that messengers bearing despatches between the two States, had crossed each other by the way, that of Virginia carrying our propositions for a committee of national correspondence, and that of Massachusetts, bringing, as my memory suggested, a similar proposition. But here I must have misremembered; and the resolutions brought us from Massachusetts, were probably those you mention of the town-meeting of Boston, on the motion of Mr. Samuel Adams, appointing a committee "to state the rights of the colonists, and of that province in particular, and the infringements of them; to communicate them to the several towns, as the sense of the town of Boston, and to request, of each town, a free communication of its sentiments on the subject." I suppose, therefore, that these resolutions were not received, as you think, while the House of Burgesses was in session in March, 1773, but a few days after we rose, and were probably what was sent by the messenger, who crossed ours by the way. They may, however, have been still different. I must, therefore, have been mistaken in supposing, and stating to Mr. Wirt, that the proposition of a committee for national correspondence, was nearly simultaneous in Virginia and Massachusetts.

A similar misapprehension of another passage in Mr. Wirt's book, for which I am also quoted, has produced a similar reclamation on the part of Massachusetts, by some of her most distinguished and estimable citizens. I had been applied to by Mr. Wirt, for such facts respecting Mr. Henry, as my intimacy with him, and participation in the transactions of the day, might have placed within my knowledge. I accordingly committed them to paper; and Virginia being the theatre of his action, was the only subject within my contemplation. While speaking of him, of the resolutions and measures here, in which he had the acknowledged lead, I used the expression, that "Mr. Henry certainly gave the first impulse to the ball of revolution." [Wirt, page 41.] The expression is indeed general, and in all its extension, would comprehend all the sister States; but indulgent construction would restrain it, as was really meant, to the subject matter under contemplation, which was Virginia alone; according to the rule of the lawyers, and a fair canon of general criticism, that every expression should be construed secundum subjectam materiam. Where the first attack was made, there must have been of course, the first act of resistance, and that was in Massachusetts. Our first overt act of war, was Mr. Henry's embodying a force of militia from several counties, regularly armed and organized, marching them in military array, and making reprisal on the King's treasury at the seat of government, for the public powder taken away by

his Governor. This was on the last days of April, 1775. Your formal battle of Lexington, was ten or twelve days before that, and greatly overshadowed in importance, as it preceded in time, our little affray, which merely amounted to a levying of arms against the King; and very possibly, you had had military affrays before the regular battle of Lexington.

These explanations will, I hope, assure you, Sir, that so far as either facts or opinions have been truly quoted from me, they have never been meant to intercept the just fame of Massachusetts, for the promptitude and perseverance of her early resistance. We willingly cede to her the laud of having been (although not exclusively) "the cradle of sound principles," and, if some of us believe she has deflected from them in her course, we retain full confidence in her ultimate return to them.

I will now proceed to your quotation from Mr. Galloway's statement of what passed in Congress, on their Declaration of Independence; in which statement there is not one word of truth, and where bearing some resemblance to truth, it is an entire perversion of it. I do not charge this on Mr. Galloway himself; his desertion having taken place long before these measures, he doubtless received his information from some of the loyal friends whom he left behind him. But as yourself, as well as others, appear embarrassed by inconsistent accounts of the proceedings on that memorable occasion, and as those who have endeavored to restore the truth, have

themselves committed some errors, I will give you some extracts from a written document on that subject; for the truth of which I pledge myself to heaven and earth; having, while the question of Independence was under consideration before Congress, taken written notes, in my seat, of what was passing, and reduced them to form on the final conclusion. I have now before me that paper, from which the following are extracts. "Friday, June 7th, 1776. The delegates from Virginia moved, in obedience to instructions from their constituents, that the Congress should declare that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be totally dissolved; that measures should be immediately taken for procuring the assistance of foreign powers, and a Confederation be formed to bind the colonies more closely together. The House, being obliged to attend at that time to some other business, the proposition was referred to the next day, when the members were ordered to attend punctually at ten o'clock. Saturday, June 8th. They proceeded to take it into consideration, and referred it to a committee of the whole, into which they immediately resolved themselves, and passed that day in debating on the subject.

"It appearing in the course of these debates, that the colonies of New York, New Jersey, Pennsylvania,

Delaware, Maryland and South Carolina, were not yet matured for falling from the parent stem, but that they were fast advancing to that state, it was thought most prudent to wait a while for them, and to postpone the final decision to July 1st. But that this might occasion as little delay as possible, a Committee was appointed to prepare a Declaration of Independence. The Committee were John Adams, Dr. Franklin, Roger Sherman, Robert R. Livingston and myself. This was reported to the House on Friday, the 28th of June, when it was read and ordered to lie on the table. On Monday, the 1st of July, the House resolved itself into a Committee of the whole, and resumed the consideration of the original motion made by the delegates of Virginia, which, being again debated through the day, was carried in the affirmative by the votes of New Hampshire, Connecticut, Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, North Carolina and Georgia. South Carolina and Pennsylvania voted against it. Delaware had but two members present, and they were divided. The delegates from New York declared they were for it themselves, and were assured their constituents were for it; but that their instructions having been drawn near a twelvemonth before, when reconciliation was still the general object, they were enjoined by them, to do nothing which should impede that object. They, therefore, thought themselves not justifiable in voting on either side, and asked leave to withdraw from the question,

which was given them. The Committee rose, and reported their resolutions to the House. Mr. Rutledge, of South Carolina, then requested the determination might be put off to the next day, as he believed his colleagues, though they disapproved of the resolution, would then join in it for the sake of unanimity. The ultimate question, whether the House would agree to the resolution of the Committee, was accordingly postponed to the next day, when it was again moved, and South Carolina concurred in voting for it. In the meantime, a third member had come post from the Delaware counties, and turned the vote of that colony in favor of the resolution. Members of a different sentiment attending that morning from Pennsylvania also, her vote was changed; so that the whole twelve colonies, who were authorized to vote at all, gave their votes for it; and within a few days [July 9th] the convention of New York approved of it, and this supplied the void occasioned by the withdrawing of their delegates from the vote." [Be careful to observe, that this vacillation and vote were on the original motion of the 7th of June, by the Virginia delegates, that Congress should declare the colonies independent.] "Congress proceeded, the same day, to consider the Declaration of Independence, which had been reported and laid on the table the Friday preceding, and on Monday, referred to a Committee of the whole. The pusillanimous idea, that we had friends in England worth keeping terms with, still haunted

the minds of many. For this reason, those passages which conveyed censures on the people of England were struck out, lest they should give them offence. The debates having taken up the greater parts of the second, third and fourth days of July, were, in the evening of the last, closed; the Declaration was reported by the Committee, agreed to by the House, and signed by every member present except Mr. Dickinson." So far my notes.

Governor M'Kean, in his letter to McCorkle of July 16th, 1817, has thrown some lights on the transactions of that day; but, trusting to his memory chiefly, at an age when our memories are not to be trusted, he has confounded two questions, and ascribed proceedings to one which belonged to the other. These two questions were, 1st, the Virginia motion of June the 7th, to declare Independence; and 2d, the actual Declaration, its matter and form. Thus he states the question on the Declaration itself, as decided on the 1st of July; but it was the Virginia motion which was voted on that day in committee of the whole; South Carolina, as well as Pennsylvania, then voting against it. But the ultimate decision in *the House*, on the report of the Committee, being, by request, postponed to the next morning, all the States voted for it, except New York, whose vote was delayed for the reason before stated. It was not till the 2d of July, that the Declaration itself was taken up; nor till the 4th, that it was decided, and it was signed by every member present, except Mr. Dickinson.

# Declaration of Independence

(July 4th, 1776)

Reproduced from the Famous Painting by John Trumbull, an excellent copy of which now adorns the Rotunda of the Capitol at Washington. This is one of the four large national pictures that Trumbull was commissioned by Congress to paint in 1815. The Original Painting is owned by Yale University, as in 1831 Colonel Trumbull disposed of his paintings to Yale College for an annuity.

This memorable group of historical personages includes most of the signers of the "Declaration of Indepence," and other noted characters associated with that memorable event. The portraits represented, enumerating them as they appear in the painting, and beginning with that of George Wythe on the extreme left, are as follows:

1 George Wythe
2 William Whipple
3 Josiah Bartlett
4 Thomas Lynch, Jr.
5 BenjaminHarrison
6 Richard Henry Lee
7 Samuel Adams
8 George Clinton
9 William Paca
10 Samuel Chase
11 Richard Stockton
12 Lewis Morris
13 William Floyd
14 Arthur Middleton
15 Thomas Hayward, Jr.
16 Charles Carroll
17 Robert Morris
18 Thomas Willing
19 Benjamin Rush
20 Elbridge Gerry
21 Robert Treat Paine
22 William Hooper
23 Stephen Hopkins
24 William Ellery
25 George Clymer
26 Joseph Hewes
27 George Walton
28 James Wilson
29 Abraham Clark
30 Francis Hopkinson
31 John Adams
32 Roger Sherman
33 Robert R. Livingston
34 Thomas Jefferson
35 Benjamin Franklin
36 Thomas Nelson, Jr.
37 Francis Lewis
38 John Witherspoop
39 Samuel Huntington
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41 Oliver Wolcott
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The subsequent signatures of members who were not then present, and some of them not yet in office, is easily explained, if we observe who they were; to wit, that they were of New York and Pennsylvania. New York did not sign till the 15th, because it was not till the 9th (five days after the general signature), that their Convention authorized them to do so. The Convention of Pennsylvania, learning that it had been signed by a minority only of their delegates, named a new delegation on the 20th, leaving out Mr. Dickinson, who had refused to sign, Willing and Humphreys who had withdrawn, re-appointing the three members who had signed, Morris, who had not been present, and five new ones, to wit, Rush, Clymer, Smith, Taylor and Ross: and Morris, and the five new members were permitted to sign, because it manifested the assent of their full delegation, and the express will of their Convention, which might have been doubted on the former signature of a minority only. Why the signature of Thornton, of New Hampshire, was permitted so late as the 4th of November, I cannot now say; but undoubtedly for some particular reason, which we should find to have been good, had it been expressed. These were the only post-signers, and you see, Sir, that there were solid reasons for receiving those of New York and Pennsylvania, and that this circumstance in no wise affects the faith of this Declaratory Charter of our rights, and of the rights of man.

With a view to correct errors of fact before they

become inveterate by repetition, I have stated what I find essentially material in my papers, but with that brevity, which the labor of writing constrains me to use.

On the four particular articles of enquiry in your letter, respecting your grandfather, the venerable Samuel Adams, neither memory nor memorandums enable me to give any information. I can say that he was truly a great man, wise in council, fertile in resources, immoveable in his purposes, and had, I think, a greater share than any other member, in advising and directing our measures, in the Northern war. As a speaker, he could not be compared with his living colleague and namesake, whose deep conceptions, nervous style, and undaunted firmness, made him truly our bulwark in debate. But Mr. Samuel Adams, although not of fluent elocution, was so rigorously logical, so clear in his views, abundant in good sense, and master always of his subject, that he commanded the most profound attention, whenever he rose in an assembly, by which the froth of declamation was heard with the most sovereign contempt. I sincerely rejoice, that the record of his worth is to be undertaken by one so much disposed as you will be, to hand him down fairly to that posterity for whose liberty and happiness he was so zealous a laborer.

With sentiments of sincere veneration for his memory, accept yourself this tribute to it, with the assurance of my great respect.

P. S. August 6th, 1822. Since the date of this letter, to-wit, this day, August 6, '22, I have received the new publication of the Secret Journals of Congress, wherein is stated a resolution of July 19th, 1776, that the Declaration passed on the 4th, be fairly engrossed on parchment, and when engrossed, be signed by every member; and another of August 2nd, that being engrossed and compared at the table, it was signed by the members; that is to say, the copy engrossed on parchment (for durability) was signed by the members, after being compared at the table, with the original one signed on paper as before stated. I add this P. S. to the copy of my letter to Mr. Wells, to prevent confounding the signature of the original with that of the copy engrossed on parchment.

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## [Note C.]

*On the instructions given to the first delegation of Virginia to Congress, in August, 1774.*

The Legislature of Virginia happened to be in session, in Williamsburg, when news was received of the passage, by the British Parliament, of the Boston Port Bill, which was to take effect on the first day of June then ensuing. The House of Burgesses, thereupon, passed a resolution, recommending to their fellow-citizens, that that day should be set apart for fasting and prayer to the Supreme Being, imploring

him to avert the calamities then threatening us, and to give us one heart and one mind to oppose every invasion of our liberties. The next day, May the 20th, 1774, the Governor dissolved us. We immediately repaired to a room in the Raleigh tavern, about one hundred paces distant from the Capitol, formed ourselves into a meeting, Peyton Randolph in the chair, and came to resolutions, declaring, that an attack on one colony, to enforce arbitrary acts, ought to be considered as an attack on all, and to be opposed by the united wisdom of all. We, therefore, appointed a Committee of correspondence, to address letters to the Speakers of the several Houses of Representatives of the colonies, proposing the appointment of deputies from each, to meet *annually in a General Congress*, to deliberate on their common interests, and on the measures to be pursued in common. The members then separated to their several homes, except those of the Committee, who met the next day, prepared letters according to instructions, and despatched them by messengers express, to their several destinations. It had been agreed, also, by the meeting, that the Burgesses, who should be elected under the writs then issuing, should be requested to meet in Convention, on a certain day in August, to learn the results of these letters, and to appoint delegates to a Congress, should that measure be approved by the other colonies. At the election, the people re-elected every man of the former Assembly, as a proof of their approbation of what they had

done. Before I left home, to attend the Convention, I prepared what I thought might be given, in instruction, to the Delegates who should be appointed to attend the General Congress proposed. They were drawn in haste, with a number of blanks, with some uncertainties and inaccuracies of historical facts, which I neglected at the moment, knowing they could be readily corrected at the meeting. I set out on my journey, but was taken sick on the road, and was unable to proceed. I therefore sent on, by express, two copies, one under cover to Patrick Henry, the other to Peyton Randolph, who I knew would be in the chair of the Convention. Of the former, no more was ever heard or known. Mr. Henry probably thought it too bold, as a first measure, as the majority of the members did. On the other copy being laid on the table of the Convention, by Peyton Randolph, as the proposition of a member, who was prevented from attendance by sickness on the road, tamer sentiments were preferred, and, I believe, wisely preferred; the leap I proposed being too long, as yet, for the mass of our citizens. The distance between these, and the instructions actually adopted, is of some curiosity, however, as it shews the inequality of pace with which we moved, and the prudence required to keep front and rear together. My creed had been formed on unsheathing the sword at Lexington. They printed the paper, however, and gave it the title of 'A summary view of the rights of British America.' In this form it got to London, where the

opposition took it up, shaped it to opposition views, and, in that form, it ran rapidly through several editions.

Mr. Marshall, in his history of General Washington, chapter 3, speaking of this proposition for Committees of correspondence and for a General Congress, says, 'this measure had already been proposed in town meeting, in Boston,' and some pages before, he had said, that 'at a session of the General Court of Massachusetts, in September, 1770, that Court, in pursuance of a favorite idea of uniting all the colonies in one system of measures, elected a Committee of correspondence, to communicate with such Committees as might be appointed by the other colonies.' This is an error. The Committees of correspondence, elected by Massachusetts, were expressly for a correspondence among the several *towns* of that province only. Besides the text of their proceedings, his own note X, proves this. The first proposition for a general correspondence between the several states, and for a General Congress, was made by our meeting of May, 1774. Botta, copying Marshall, has repeated his error, and so it will be handed on from copyist to copyist, *ad infinitum*. Here follows my proposition, and the more prudent one which was adopted.

Resolved, That it be an instruction to the said deputies, when assembled in General Congress, with the deputies from the other states of British America, to propose to the said Congress, that an humble and dutiful address be presented to his Majesty, begging

leave to lay before him, as Chief Magistrate of the British empire, the united complaints of his Majesty's subjects in America; complaints which are excited by many unwarrantable encroachments and usurpations, attempted to be made by the legislature of one part of the empire, upon the rights which God, and the laws, have given equally and independently to all. To represent to his Majesty that these, his States, have often individually made humble application to his imperial Throne, to obtain, through its intervention, some redress of their injured rights; to none of which, was ever even an answer condescended. Humbly to hope that this, their joint address, penned in the language of truth, and divested of those expressions of servility, which would persuade his Majesty that we are asking favors, and not rights, shall obtain from his Majesty a more respectful acceptance; and this his Majesty will think we have reason to expect, when he reflects that he is no more than the chief officer of the people, appointed by the laws, and circumscribed with definite powers, to assist in working the great machine of government, erected for their use, and, consequently, subject to their superintendence; and, in order that these, our rights, as well as the invasions of them, may be laid more fully before his Majesty, to take a view of them, from the origin and first settlement of these countries.

To remind him that our ancestors, before their emigration to America, were the free inhabitants of

the British dominions in Europe, and possessed a right, which nature has given to all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies, under such laws and regulations as, to them, shall seem most likely to promote public happiness. That their Saxon ancestors had, under this universal law, in like manner, left their native wilds and woods in the North of Europe, had possessed themselves of the Island of Britain, then less charged with inhabitants, and had established there that system of laws which has so long been the glory and protection of that country. Nor was ever any claim of superiority or dependence asserted over them, by that mother country from which they had migrated: and were such a claim made, it is believed his Majesty's subjects in Great Britain have too firm a feeling of the rights derived to them from their ancestors, to bow down the sovereignty of their state before such visionary pretensions. And it is thought that no circumstance has occurred to distinguish, materially, the British from the Saxon emigration. America was conquered, and her settlements made and firmly established, at the expense of individuals, and not of the British public. Their own blood was spilt in acquiring lands for their settlement, their own fortunes expended in making that settlement effectual. For themselves they fought, for themselves they conquered, and for themselves alone they have

right to hold. No shilling was ever issued from the public treasures of his Majesty, or his ancestors, for their assistance, till of very late times, after the colonies had become established on a firm and permanent footing. That then, indeed, having become valuable to Great Britain for her commercial purposes, his Parliament was pleased to lend them assistance against an enemy who would fain have drawn to herself the benefits of their commerce, to the great aggrandisement of herself, and danger of Great Britain. Such assistance, and in such circumstances, they had often before given to Portugal and other allied states, with whom they carry on a commercial intercourse. Yet these states never supposed, that by calling in her aid, they thereby submitted themselves to her sovereignty. Had such terms been proposed, they would have rejected them with disdain, and trusted for better, to the moderation of their enemies, or to a vigorous exertion of their own force. We do not, however, mean to underrate those aids, which, to us, were doubtless valuable, on whatever principles granted: but we would shew that they cannot give a title to that authority which the British Parliament would arrogate over us; and that may amply be repaid by our giving to the inhabitants of Great Britain such exclusive privileges in trade as may be advantageous to them, and, at the same time, not too restrictive to ourselves. That settlement having been thus effected in the wilds of America, the emigrants thought proper to adopt that system of laws,

under which they had hitherto lived in the mother country, and to continue their union with her, by submitting themselves to the same common sovereign, who was thereby made the central link, connecting the several parts of the empire thus newly multiplied.

But that not long were they permitted, however far they thought themselves removed from the hand of oppression, to hold undisturbed the rights thus acquired at the hazard of their lives and loss of their fortunes. A family of Princes was then on the British throne, whose treasonable crimes against their people, brought on them, afterwards, the exertion of those sacred and sovereign rights of punishment, reserved in the hands of the people for cases of extreme necessity, and judged by the constitution unsafe to be delegated to any other judicature. While every day brought forth some new and unjustifiable exertion of power over their subjects on that side of the water, it was not to be expected that those here, much less able at that time to oppose the designs of despotism, should be exempted from injury. Accordingly, this country which had been acquired by the lives, the labors, and fortunes of individual adventurers, was by these Princes, several times, parted out and distributed among the favorites and followers of their fortunes; and, by an assumed right of the Crown alone, were erected into distinct and independent governments; a measure, which it is believed, his Majesty's prudence and

understanding would prevent him from imitating at this day; as no exercise of such power, of dividing and dismembering a country, has ever occurred in his Majesty's realm of England, though now of very ancient standing; nor could it be justified or acquiesced under there, or in any part of his Majesty's empire.

That the exercise of a free trade with all parts of the world, possessed by the American colonists, as of natural right, and which no law of their own had taken away or abridged, was next the object of unjust encroachment. Some of the colonies having thought proper to continue the administration of their government in the name and under the authority of his Majesty, King Charles the first, whom, notwithstanding his late deposition by the Commonwealth of England, they continued in the sovereignty of their State, the Parliament, for the Commonwealth, took the same in high offence, and assumed upon themselves the power of prohibiting their trade with all other parts of the world, except the Island of Great Britain. This arbitrary act, however, they soon recalled, and by solemn treaty entered into on the 12th day of March, 1651, between the said Commonwealth, by their Commissioners, and the colony of Virginia by their House of Burgesses, it was expressly stipulated by the eighth article of the said treaty, that they should have 'free trade as the people of England do enjoy to all places and with all nations, according to the laws

of that Commonwealth.' But that, upon the restoration of his Majesty, King Charles the second, their rights of free commerce fell once more a victim to arbitrary power; and by several acts of his reign, as well as of some of his successors, the trade of the colonies was laid under such restrictions, as show what hopes they might form from the justice of a British Parliament, were its uncontrolled power admitted over these States.[1] History has informed us, that bodies of men as well as of individuals, are susceptible of the spirit of tyranny. A view of these acts of Parliament for regulation, as it has been affectedly called, of the American trade, if all other evidences were removed out of the case, would undeniably evince the truth of this observation. Besides the duties they impose on our articles of export and import, they prohibit our going to any markets Northward of Cape Finisterra, in the kingdom of Spain, for the sale of commodities which Great Britain will not take from us, and for the purchase of others, with which she cannot supply us; and that, for no other than the arbitrary purpose of purchasing for themselves, by a sacrifice of our rights and interests, certain privileges in their commerce with an allied state, who, in confidence, that their exclusive trade with America will be continued, while the principles and power of the British Parliament be the same, have indulged themselves

[1] 12. C. 2. c. 18. 15. C. 2. c. 11. 25. C. 2. c. 7. 7. 8. W. M. c. 22. 11 W. 34. Anne. 6. C. 2. c. 13.

in every exorbitance which their avarice could dictate or our necessity extort: have raised their commodities called for in America, to the double and treble of what they sold for, before such exclusive privileges were given them, and of what better commodities of the same kind would cost us elsewhere; and, at the same time, give us much less for what we carry thither, than might be had at more convenient ports. That these acts prohibit us from carrying, in quest of other purchasers, the surplus of our tobaccos, remaining after the consumption of Great Britain is supplied: so that we must leave them with the British merchant, for whatever he will please to allow us, to be by him re-shipped to foreign markets, where he will reap the benefits of making sale of them for full value. That, to heighten still the idea of Parliamentary justice, and to show with what moderation they are like to exercise power, where themselves are to feel no part of its weight, we take leave to mention to his Majesty, certain other acts of the British Parliament, by which they would prohibit us from manufacturing, for our own use, the articles we raise on our own lands, with our own labor. By an act passed in the fifth year of the reign of his late Majesty, King George the second, an American subject is forbidden to make a hat for himself, of the fur which he has taken, perhaps, on his own soil; an instance of despotism, to which no parallel can be produced in the most arbitrary ages of British history. By

one other act, passed in the twenty-third year of the same reign, the iron which we make, we are forbidden to manufacture; and, heavy as that article is, and necessary in every branch of husbandry, besides commission and insurance, we are to pay freight for it to Great Britain, and freight for it back again, for the purpose of supporting, not men, but machines, in the island of Great Britain. In the same spirit of equal and impartial legislation, is to be viewed the act of Parliament, passed in the fifth year of the same reign, by which American lands are made subject to the demands of British creditors, while their own lands were still continued unanswerable for their debts; from which, one of these conclusions must necessarily follow, either that justice is not the same thing in America as in Britain, or else, that the British Parliament pay less regard to it here than there. But, that we do not point out to his Majesty the injustice of these acts, with intent to rest on that principle the cause of their nullity; but to show that experience confirms the propriety of those political principles, which exempt us from the jurisdiction of the British Parliament. The true ground on which we declare these acts void, is, that the British Parliament has no right to exercise authority over us.

That these exercises of usurped power have not been confined to instances alone, in which themselves were interested; but they have also intermeddled with the regulation of the internal affairs

of the colonies. The act of the 9th of Anne for establishing a post office in America, seems to have had little connection with British convenience except that of accommodating his Majesty's ministers and favorites with the sale of a lucrative and easy office.

That thus have we hastened through the reigns which preceded his Majesty's, during which the violation of our rights were less alarming, because repeated at more distant intervals, than that rapid and bold succession of injuries, which is likely to distinguish the present from all other periods of American story. Scarcely have our minds been able to emerge from the astonishment into which one stroke of Parliamentary thunder has involved us, before another more heavy and more alarming is fallen on us. Single acts of tyranny may be ascribed to the accidental opinion of a day; but a series of oppressions, begun at a distinguished period, and pursued unalterably through every change of ministers, too plainly prove a deliberate, systematical plan of reducing us to slavery.

That the act passed in the fourth year of his Majesty's reign, entitled 'an act — Act for granting certain duties.

One other act passed in the fifth year of his reign, entitled 'an act — Stamp act.

One other act passed in the sixth year of his reign, entitled 'an act — Act declaring the right of Parliament over the colonies.

And one other act passed in the seventh year of his reign, entitled 'an act — Act for granting duties on paper, tea, &c.

Form that connected chain of Parliamentary usurpation, which has already been the subject of frequent applications to his Majesty, and the Houses of Lords and Commons of Great Britain; and, no answers having yet been condescended to any of these, we shall not trouble his Majesty with a repetition of the matters they contained.

Act suspending legislature of New-York.

But that one other act passed in the same seventh year of his reign, having been a peculiar attempt, must ever require peculiar mention. It is entitled 'an act

One free and independent legislature, hereby takes upon itself to suspend the powers of another, free and independent as itself. Thus exhibiting a phenomenon unknown in nature, the creator, and creature of its own power. Not only the principles of common sense, but the common feelings of human nature must be surrendered up, before his Majesty's subjects here, can be persuaded to believe, that they hold their political existence at the will of a British Parliament. Shall these governments be dissolved, their property annihilated, and their people reduced to a state of nature, at the imperious breath of a body of men whom they never saw, in whom they never confided, and over whom they have no powers of punishment or removal, let their crimes against the American public be ever so great? Can any one reason be assigned, why one hundred and sixty

thousand electors in the island of Great Britain, should give law to four millions in the States of America, every individual of whom is equal to every individual of them in virtue, in understanding, and in bodily strength? Were this to be admitted, instead of being a free people, as we have hitherto supposed, and mean to continue ourselves, we should suddenly be found the slaves, not of one, but of one hundred and sixty thousand tyrants; distinguished, too, from all others, by this singular circumstance, that they are removed from the reach of fear, the only restraining motive which may hold the hand of a tyrant.

That, by 'an act to discontinue in such manner, and for such time as are therein mentioned, the landing and discharging, lading or shipping of goods, wares and merchandize, at the town and within the harbor of Boston, in the province of Massachusetts bay, in North America,'[1] which was passed at the last session of the British Parliament, a large and populous town, whose trade was their sole subsistence, was deprived of that trade, and involved in utter ruin. Let us for a while, suppose the question of right suspended, in order to examine this act on principles of justice. An act of Parliament had been passed, imposing duties on teas, to be paid in America, against which act the Americans had protested, as inauthoritative. The East India Company, who till that time, had never sent a pound of

[1] 14. G. 3.

tea to America on their own account, step forth on that occasion, the asserters of Parliamentary right, and send hither many ship loads of that obnoxious commodity. The masters of their several vessels, however, on their arrival in America, wisely attended to admonition, and returned with their cargoes. In the province of New-England alone, the remonstrances of the people were disregarded, and a compliance, after being many days waited for, was flatly refused. Whether in this, the master of the vessel was governed by his obstinacy, or his instructions, let those who know, say. There are extraordinary situations which require extraordinary interposition. An exasperated people, who feel that they possess power, are not easily restrained within limits strictly regular. A number of them assembled in the town of Boston, threw the tea into the ocean, and dispersed without doing any other act of violence. If in this they did wrong, they were known, and were amenable to the laws of the land; against which, it could not be objected, that they had ever, in any instance, been obstructed or diverted from the regular course, in favor of popular offenders. They should, therefore, not have been distrusted on this occasion. But that ill-fated colony had formerly been bold in their enmities against the House of Stuart, and were now devoted to ruin, by that unseen hand which governs the momentous affairs of this great empire. On the partial representations of a few worthless ministerial dependants, whose con-

stant office it has been to keep that government embroiled, and who, by their treacheries, hope to obtain the dignity of British knighthood, without calling for a party accused, without asking a proof, without attempting a distinction between the guilty and the innocent, the whole of that ancient and wealthy town, is in a moment reduced from opulence to beggary. Men who had spent their lives in extending the British commerce, who had invested, in that place, the wealth their honest endeavors had merited, found themselves and their families, thrown at once on the world, for subsistence by its charities. Not the hundredth part of the inhabitants of that town, had been concerned in the act complained of; many of them were in Great Britain, and in other parts beyond the sea; yet all were involved in one indiscriminate ruin, by a new executive power, unheard of till then, that of a British Parliament. A property of the value of many millions of money, was sacrificed to revenge, not repay, the loss of a few thousands. This is administering justice with a heavy hand indeed! And when is this tempest to be arrested in its course? Two wharves are to be opened again when his Majesty shall think proper: the residue, which lined the extensive shores of the bay of Boston, are forever interdicted the exercise of commerce. This little exception seems to have been thrown in for no other purpose, than that of setting a precedent for investing his Majesty with legislative powers. If the pulse of his people shall

beat calmly under this experiment, another and another will be tried, till the measure of despotism be filled up. It would be an insult on common sense, to pretend that this exception was made, in order to restore its commerce to that great town. The trade, which cannot be received at two wharves alone, must of necessity be transferred to some other place; to which it will soon be followed by that of the two wharves. Considered in this light, it would be an insolent and cruel mockery at the annihilation of the town of Boston. By the act for the suppression of riots and tumults in the town of Boston,[1] passed also in the last session of Parliament, a murder committed there, is, if the Governor pleases, to be tried in the court of King's bench, in the island of Great Britain, by a jury of Middlesex. The witnesses, too, on receipt of such a sum as the Governor shall think it reasonable for them to expend, are to enter into recognizance to appear at the trial. This is, in other words, taxing them to the amount of their recognizance; and that amount may be whatever a Governor pleases. For who does his Majesty think can be prevailed on to cross the Atlantic for the sole purpose of bearing evidence to a fact? His expenses are to be borne, indeed, as they shall be estimated by a Governor; but who are to feed the wife and children whom he leaves behind, and who have had no other subsistence but his daily labor? Those epidemical disorders, too, so terrible in a

[1] 14. G. 3.

foreign climate, is the cure of them to be estimated among the articles of expense, and their danger to be warded off by the Almighty power of a Parliament? And the wretched criminal, if he happen to have offended on the American side, stripped of his privilege of trial by peers of his vicinage, removed from the place where alone full evidence could be obtained, without money, without counsel, without friends, without exculpatory proof, is tried before Judges predetermined to condemn. The cowards who would suffer a countryman to be torn from the bowels of their society, in order to be thus offered a sacrifice to Parliamentary tyranny, would merit that everlasting infamy now fixed on the authors of the act! A clause, for a similar purpose, had been introduced into an act passed in the twelfth year of his Majesty's reign, entitled, 'an act for the better securing and preserving his Majesty's Dock-yards, Magazines, Ships, Ammunition and Stores;' against which, as meriting the same censures, the several colonies have already protested.

That these are the acts of power, assumed by a body of men foreign to our constitutions, and unacknowledged by our laws; against which we do, on behalf of the inhabitants of British America, enter this, our solemn and determined protest. And we do earnestly intreat his Majesty, as yet the only mediatory power between the several States of the British empire, to recommend to his Parliament of Great Britain, the total revocation of these acts,

which, however nugatory they may be, may yet prove the cause of further discontents and jealousies among us.

That we next proceed to consider the conduct of his Majesty, as holding the Executive powers of the laws of these States, and mark out his deviations from the line of duty. By the Constitution of Great Britain, as well as of the several American States, his Majesty possesses the power of refusing to pass into a law, any bill which has already passed the other two branches of the legislature. His Majesty, however, and his ancestors, conscious of the impropriety of opposing their single opinion to the united wisdom of two Houses of Parliament, while their proceedings were unbiassed by interested principles, for several ages past, have modestly declined the exercise of this power, in that part of his empire called Great Britain. But, by change of circumstances, other principles than those of justice simply, have obtained an influence on their determinations. The addition of new States to the British empire has produced an addition of new, and, sometimes, opposite interests. It is now, therefore, the great office of his Majesty to resume the exercise of his negative power, and to prevent the passage of laws by any one legislature of the empire, which might bear injuriously on the rights and interests of another. Yet this will not excuse the wanton exercise of this power, which we have seen his Majesty practice on the laws of the American legislature.

For the most trifling reasons, and, sometimes for no conceivable reason at all, his Majesty has rejected laws of the most salutary tendency. The abolition of domestic slavery is the great object of desire in those colonies, where it was, unhappily, introduced in their infant state. But previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa. Yet our repeated attempts to effect this, by prohibitions, and by imposing duties which might amount to a prohibition, having been hitherto defeated by his Majesty's negative: thus preferring the immediate advantages of a few British corsairs, to the lasting interests of the American States, and to the rights of human nature, deeply wounded by this infamous practice. Nay, the single interposition of an interested individual against a law was scarcely ever known to fail of success, though, in the opposite scale, were placed the interests of a whole country. That this is so shameful an abuse of a power, trusted with his Majesty for other purposes, as if, not reformed, would call for some legal restrictions.

With equal inattention to the necessities of his people here, has his Majesty permitted our laws to lie neglected, in England, for years, neither confirming them by his assent, nor annulling them by his negative: so, that such of them as have no suspending clause, we hold on the most precarious of all tenures, his Majesty's will; and such of them as suspend themselves till his Majesty's assent be

obtained, we have feared might be called into existence at some future and distant period, when time and change of circumstances shall have rendered them destructive to his people here. And, to render this grievance still more oppressive, his Majesty, by his instructions, has laid his Governors under such restrictions, that they can pass no law, of any moment, unless it have such suspending clause: so that, however immediate may be the call for legislative interposition, the law cannot be executed, till it has twice crossed the Atlantic, by which time the evil may have spent its whole force.

But in what terms reconcilable to Majesty, and at the same time to truth, shall we speak of a late instruction to his Majesty's Governor of the colony of Virginia, by which he is forbidden to assent to any law for the division of a county, unless the new county will consent to have no representative in Assembly? That colony has as yet affixed no boundary to the Westward. Their Western counties, therefore, are of an indefinite extent. Some of them are actually seated many hundred miles from their Eastern limits. Is it possible, then, that his Majesty can have bestowed a single thought on the situation of those people, who, in order to obtain justice for injuries, however great or small, must, by the laws of that colony, attend their county court at such a distance, with all their witnesses, monthly, till their litigation be determined? Or does his Majesty seriously wish, and publish it to the world,

that his subjects should give up the glorious right of representation, with all the benefits derived from that, and submit themselves the absolute slaves of his sovereign will? Or is it rather meant to confine the legislative body to their present numbers, that they may be the cheaper bargain, whenever they shall become worth a purchase?

One of the articles of impeachment against Tresilian, and the other Judges of Westminster Hall, in the reign of Richard the Second, for which they suffered death, as traitors to their country, was, that they had advised the King, that he might dissolve his Parliament at any time; and succeeding kings have adopted the opinion of these unjust Judges. Since the establishment, however, of the British constitution, at the glorious Revolution, on its free and ancient principles, neither his Majesty, nor his ancestors, have exercised such a power of dissolution in the island of Great Britain;[1] and when his Majesty was petitioned, by the united voice of his people there, to dissolve the present Parliament, who had become obnoxious to them, his Ministers were heard to declare, in open Parliament, that his Majesty possessed no such power by the constitution. But how different their language, and his practice,

[1] On further inquiry, I find two instances of dissolutions before the Parliament would, of itself, have been at an end: viz., the Parliament called to meet August 24, 1698, was dissolved by King William, December 19, 1700, and a new one called, to meet February 6, 1701, which was also dissolved, November 11, 1701, and a new one met December 30, 1701.

here! To declare, as their duty required, the known rights of their country, to oppose the usurpation of every foreign judicature, to disregard the imperious mandates of a Minister or Governor, have been the avowed causes of dissolving Houses of Representatives in America. But if such powers be really vested in his Majesty, can he suppose they are there placed to awe the members from such purposes as these? When the representative body have lost the confidence of their constituents, when they have notoriously made sale of their most valuable rights, when they have assumed to themselves powers which the people never put into their hands, then, indeed, their continuing in office becomes dangerous to the State, and calls for an exercise of the power of dissolution. Such being the cause for which the representative body should, and should not, be dissolved, will it not appear strange, to an unbiassed observer, that that of Great Britain was not dissolved, while those of the colonies have repeatedly incurred that sentence?

But your Majesty, or your Governors, have carried this power beyond every limit known or provided for by the laws. After dissolving one House of Representatives, they have refused to call another, so that, for a great length of time, the legislature provided by the laws, has been out of existence. From the nature of things, every society must, at all times, possess within itself the sovereign powers of legislation. The feelings of human nature revolt

against the supposition of a State so situated, as that it may not, in any emergency, provide against dangers which, perhaps, threaten immediate ruin. While those bodies are in existence to whom the people have delegated the powers of legislation, they alone possess, and may exercise, those powers. But when they are dissolved, by the lopping off one or more of their branches, the power reverts to the people, who may use it to unlimited extent, either assembling together in person, sending deputies, or in any other way they may think proper. We forbear to trace consequences further; the dangers are conspicuous with which this practice is replete.

That we shall, at this time also, take notice of an error in the nature of our land holdings, which crept in at a very early period of our settlement. The introduction of the Feudal tenures into the kingdom of England, though ancient, is well enough understood to set this matter in a proper light. In the earlier ages of the Saxon settlement, feudal holdings were certainly altogether unknown, and very few, if any, had been introduced at the time of the Norman conquest. Our Saxon ancestors held their lands, as they did their personal property, in absolute dominion, disincumbered with any superior, answering nearly to the nature of those possessions which the Feudalist term Allodial. William the Norman, first introduced that system generally. The lands which had belonged to those who fell in the battle of Hastings, and in the subsequent insur-

rections of his reign, formed a considerable proportion of the lands of the whole kingdom. These he granted out, subject to feudal duties, as did he also those of a great number of his new subjects, who, by persuasions or threats, were induced to surrender them for that purpose. But still, much was left in the hands of his Saxon subjects, held of no superior, and not subject to feudal conditions. These, therefore, by express laws, enacted to render uniform the system of military defence, were made liable to the same military duties as if they had been feuds; and the Norman lawyers soon found means to saddle them, also, with the other feudal burthens. But still they had not been surrendered to the King, they were not derived from his grant, and therefore they were not holden of him. A general principle was introduced, that "all lands in England were held either mediately or immediately of the Crown;" but this was borrowed from those holdings which were truly feudal, and only applied to others for the purposes of illustration. Feudal holdings were, therefore, but exceptions out of the Saxon laws of possession, under which all lands were held in absolute right. These, therefore, still form the basis or groundwork of the Common law, to prevail wheresoever the exceptions have not taken place. America was not conquered by William the Norman, nor its lands surrendered to him or any of his successors. Possessions there are, undoubtedly, of the Allodial nature. Our ancestors, however, who migrated

hither, were laborers, not lawyers. The fictitious principle, that all lands belong originally to the King, they were early persuaded to believe real, and accordingly took grants of their own lands from the Crown. And while the Crown continued to grant for small sums and on reasonable rents, there was no inducement to arrest the error, and lay it open to public view. But his Majesty has lately taken on him to advance the terms of purchase and of holding, to the double of what they were; by which means, the acquisition of lands being rendered difficult, the population of our country is likely to be checked. It is time, therefore, for us to lay this matter before his Majesty, and to declare, that he has no right to grant lands of himself. From the nature and purpose of civil institutions, all the lands within the limits, which any particular party has circumscribed around itself, are assumed by that society, and subject to their allotment; this may be done by themselves assembled collectively, or by their legislature, to whom they may have delegated sovereign authority; and, if they are allotted in neither of these ways, each individual of the society, may appropriate to himself such lands as he finds vacant, and occupancy will give him title.

That, in order to enforce the arbitrary measures before complained of, his Majesty has, from time to time, sent among us large bodies of armed forces not made up of the people here, nor raised by the authority of our laws. Did his Majesty possess such

a right as this, it might swallow up all our other rights, whenever he should think proper. But his Majesty has no right to land a single armed man on our shores; and those whom he sends here are liable to our laws, for the suppression and punishment of riots, routs, and unlawful assemblies, or are hostile bodies invading us in defiance of law. When, in the course of the late war, it became expedient that a body of Hanoverian troops should be brought over for the defence of Great Britain, his Majesty's grandfather, our late sovereign, did not pretend to introduce them under any authority he possessed. Such a measure would have given just alarm to his subjects of Great Britain, whose liberties would not be safe if armed men of another country, and of another spirit, might be brought into the realm at any time, without the consent of their legislature. He, therefore, applied to Parliament, who passed an act for that purpose, limiting the number to be brought in, and the time they were to continue. In like manner is his Majesty restrained in every part of the empire. He possesses indeed the executive power of the laws in every State; but they are the laws of the particular State, which he is to administer within that State, and not those of any one within the limits of another. Every State must judge for itself, the number of armed men which they may safely trust among them, of whom they are to consist, and under what restrictions they are to be laid. To render these proceedings still more criminal against our laws, instead of

subjecting the military to the civil power, his majesty has expressly made the civil subordinate to the military. But can his Majesty thus put down all law under his feet? Can he erect a power superior to that which erected himself? He has done it indeed by force; but let him remember that force cannot give right.

That these are our grievances, which we have thus laid before his Majesty, with that freedom of language and sentiment which becomes a free people claiming their rights as derived from the laws of nature, and not as the gift of their Chief Magistrate. Let those flatter, who fear: it is not an American art. To give praise where it is not due might be well from the venal, but would ill beseem those who are asserting the rights of human nature. They know, and will, therefore, say, that Kings are the servants, not the proprietors of the people. Open your breast, Sire, to liberal and expanded thought. Let not the name of George the Third, be a blot on the page of history. You are surrounded by British counsellors, but remember that they are parties. You have no ministers for American affairs, because you have none taken from among us, nor amenable to the laws on which they are to give you advice. It behooves you, therefore, to think and to act for yourself and your people. The great principles of right and wrong are legible to every reader; to pursue them, requires not the aid of many counsellors. The whole art of government consists in the

art of being honest. Only aim to do your duty, and mankind will give you credit where you fail. No longer persevere in sacrificing the rights of one part of the empire to the inordinate desires of another; but deal out to all, equal and impartial right. Let no act be passed by any one legislature, which may infringe on the rights and liberties of another. This is the important post in which fortune has placed you, holding the balance of a great, if a well-poised empire. This, Sire, is the advice of your great American council, on the observance of which may perhaps depend your felicity and future fame, and the preservation of that harmony which alone can continue, both to Great Britain and America, the reciprocal advantages of their connection. It is neither our wish nor our interest to separate from her. We are willing, on our part, to sacrifice everything which reason can ask, to the restoration of that tranquillity for which all must wish. On their part, let them be ready to establish union on a generous plan. Let them name their terms, but let them be just. Accept of every commercial preference it is in our power to give, for such things as we can raise for their use, or they make for ours. But let them not think to exclude us from going to other markets to dispose of those commodities which they cannot use, nor to supply those wants which they cannot supply. Still less, let it be proposed, that our properties, within our own territories, shall be taxed or regulated by any

power on earth, but our own. The God who gave us life, gave us liberty at the same time: the hand of force may destroy, but cannot disjoin them. This, Sire, is our last, our determined resolution. And that you will be pleased to interpose, with that efficacy which your earnest endeavors may insure, to procure redress of these our great grievances, to quiet the minds of your subjects in British America against any apprehensions of future encroachment, to establish fraternal love and harmony through the whole empire, and that that may continue to the latest ages of time, is the fervent prayer of all British America.

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[Note D.]

August, 1774.

*Instructions for the Deputies appointed to meet in General Congress on the part of this Colony.*

The unhappy disputes between Great Britain and her American colonies, which began about the third year of the reign of his present Majesty, and since, continually increasing, have proceeded to lengths so dangerous and alarming, as to excite just apprehensions in the minds of his Majesty's faithful subjects of this colony, that they are in danger of being deprived of their natural, ancient, constitutional, and chartered rights, have compelled them to take the same into their most serious consideration; and, being deprived of their usual and accustomed mode

of making known their grievances, have appointed us their representatives to consider what is proper to be done in this dangerous crisis of American affairs. It being our opinion that the united wisdom of North America should be collected in a General Congress of all the colonies, we have appointed the Honorable Peyton Randolph, Richard Henry Lee, George Washington, Patrick Henry, Richard Bland, Benjamin Harrison, and Edmund Pendleton, Esquires, deputies to represent this colony in the said Congress, to be held at Philadelphia, on the first Monday in September next.

And that they may be the better informed of our sentiments, touching the conduct we wish them to observe on this important occasion, we desire that they will express, in the first place, our faith and true allegiance to his Majesty, King George the Third, our lawful and rightful sovereign; and that we are determined, with our lives and fortunes, to support him in the legal exercise of all his just rights and prerogatives. And, however misrepresented, we sincerely approve of a constitutional connection with Great Britain, and wish, most ardently, a return of that intercourse of affection and commercial connection, that formerly united both countries, which can only be effected by a removal of those causes of discontent, which have of late unhappily divided us.

It cannot admit of a doubt, but the British subjects in America are entitled to the same rights and privileges as their fellow subjects possess in Britain;

and therefore, that the power assumed by the British Parliament to bind America by their statutes *in all cases* whatsoever, is unconstitutional, and the source of these unhappy differences.

The end of government would be defeated by the British Parliament exercising a power over the lives, the property, and the liberty of American subjects, who are not, and, from their local circumstances, cannot be, there represented. Of this nature, we consider the several acts of Parliament for raising a revenue in America, for extending the jurisdiction of the courts of Admiralty, for seizing American subjects, and transporting them to Britain to be tried for crimes committed in America, and the several late oppressive acts respecting the town of Boston, and Province of the Massachusetts Bay.

The original constitution of the American colonies possessing their assemblies with the sole right of directing their internal polity, it is absolutely destructive of the end of their institution, that their legislatures should be suspended, or prevented, by hasty dissolutions, from exercising their legislative powers.

Wanting the protection of Britain, we have long acquiesced in their acts of navigation, restrictive of our commerce, which we consider as an ample recompense for such protection; but as those acts derive their efficacy from that foundation alone, we have reason to expect they will be restrained, so as to produce the reasonable purposes of Britain, and not injurious to us.

To obtain redress of these grievances, without which the people of America can neither be safe, free, nor happy, they are willing to undergo the great inconvenience that will be derived to them, from stopping all imports whatever, from Great Britain, after the first day of November next, and also to cease exporting any commodity whatsoever, to the same place, after the tenth day of August, 1775. The earnest desire we have to make as quick and full payment as possible of our debts to Great Britain, and to avoid the heavy injury that would arise to this country from an earlier adoption of the non-exportation plan, after the people have already applied so much of their labor to the perfecting of the present crop, by which means, they have been prevented from pursuing other methods of clothing and supporting their families, have rendered it necessary to restrain you in this article of non-exportation; but it is our desire, that you cordially co-operate with our sister colonies in General Congress, in such other just and proper methods as they, or the majority, shall deem necessary for the accomplishment of these valuable ends.

The proclamation issued by General Gage, in the government of the Province of the Massachusetts Bay, declaring it treason for the inhabitants of that province to assemble themselves to consider of their grievances, and form associations for their common conduct on the occasion, and requiring the civil magistrates and officers to apprehend all such per-

sons, to be tried for their supposed offences, is the most alarming process that ever appeared in a British government; and the said General Gage hath, thereby, assumed, and taken upon himself, powers denied by the constitution to our legal sovereign; that he, not having condescended to disclose by what authority he exercises such extensive and unheard of powers, we are at a loss to determine, whether he intends to justify himself as the representative of the King, or as the Commander-in-Chief of his Majesty's forces in America. If he considers himself as acting in the character of his Majesty's representative, we would remind him that the statute 25th, Edward the Third has expressed and defined all treasonable offences, and that the legislature of Great Britain had declared, that no offence shall be construed to be treason, but such as is pointed out by that statute, and that this was done to take out of the hands of tyrannical Kings, and of weak and wicked Ministers, that deadly weapon, which constructive treason had furnished them with, and which had drawn the blood of the best and honestest men in the kingdom; and that the King of Great Britain hath no right by his proclamation, to subject his people to imprisonment, pains, and penalties.

That if the said General Gage conceives he is empowered to act in this manner, as the Commander-in-Chief of his Majesty's forces in America, this odious and illegal proclamation must be considered as a plain and full declaration, that this despotic Viceroy

will be bound by no law, nor regard the constitutional rights of his Majesty's subjects, whenever they interfere with the plan he has formed for oppressing the good people of the Massachusetts Bay; and, therefore, that the executing, or attempting to execute, such proclamations, will justify resistance and reprisal.

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[Note E.]

Monticello, November 1, 1778.

Dear Sir,

I have got through the bill for "proportioning crimes and punishments in cases heretofore capital," and now enclose it to you with a request that you will be so good, as scrupulously to examine and correct it, that it may be presented to our committee with as few defects as possible. In its style, I have aimed at accuracy, brevity, and simplicity, preserving, however, the very words of the established law, wherever their meaning had been sanctioned by judicial decisions, or rendered technical by usage. The same matter, if couched in the modern statutory language, with all its tautologies, redundancies, and circumlocutions, would have spread itself over many pages, and been unintelligible to those whom it most concerns. Indeed, I wished to exhibit a sample of reformation in the barbarous style into which modern statutes have degenerated from their ancient simplicity. And I must pray you to be

as watchful over what I have not said, as what is said; for the omissions of this bill have all their positive meaning. I have thought it better to drop, in silence, the laws we mean to discontinue, and let them be swept away by the general negative words of this, than to detail them in clauses of express repeal. By the side of the text I have written the notes I made, as I went along, for the benefit of my own memory. They may serve to draw your attention to questions, to which the expressions or the omissions of the text may give rise. The extracts from the Anglo-Saxon laws, the sources of the Common law, I wrote in their original, for my own satisfaction;[1] but I have added Latin, or liberal English translations. From the time of Canute to that of the Magna Charta, you know, the text of our statutes is preserved to us in Latin only, and some old French.

I have strictly observed the scale of punishments settled by the Committee, without being entirely satisfied with it. The *Lex talionis*, although a restitution of the Common law, to the simplicity of which we have generally found it so advantageous to return, will be revolting to the humanized feelings of modern times. An eye for an eye, and a hand for a hand, will exhibit spectacles in execution whose moral effect would be questionable; and even the *membrum pro membro* of Bracton, or the punishment of the offending member, although long authorized by our law,

[1 In this publication, the original Saxon words are given, but, owing to the want of Saxon letter, they are printed in common type.]

for the same offence in a slave has, you know, been not long since repealed, in conformity with public sentiment. This needs reconsideration.

I have heard little of the proceedings of the Assembly, and do not expect to be with you till about the close of the month. In the meantime, present me respectfully to Mrs. Wythe, and accept assurances of the affectionate esteem and respect of, dear Sir,

Your friend and servant.

George Wythe, Esq.

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*A Bill for proportioning Crimes and Punishments, in cases heretofore Capital.*

Whereas, it frequently happens that wicked and dissolute men, resigning themselves to the dominion of inordinate passions, commit violations on the lives, liberties, and property of others, and, the secure enjoyment of these having principally induced men to enter into society, government would be defective in its principal purpose, were it not to restrain such criminal acts, by inflicting due punishments on those who perpetrate them; but it appears, at the same time, equally deducible from the purposes of society, that a member thereof, committing an inferior injury, does not wholly forfeit the protection of his fellow citizens, but, after suffering a punishment in proportion to his offence, is entitled to their protection

from all greater pain, so that it becomes a duty in the legislature to arrange, in a proper scale, the crimes which it may be necessary for them to repress, and to adjust thereto a corresponding gradation of punishments.

And whereas, the reformation of offenders, though an object worthy the attention of the laws, is not effected at all by capital punishments, which exterminate instead of reforming, and should be the last melancholy resource against those whose existence is become inconsistent with the safety of their fellow citizens, which also weaken the State, by cutting off so many who, if reformed, might be restored sound members to society, who, even under a course of correction, might be rendered useful in various labors for the public, and would be living and long-continued spectacles to deter others from committing the like offences.

And forasmuch as the experience of all ages and countries hath shown, that cruel and sanguinary laws defeat their own purpose, by engaging the benevolence of mankind to withhold prosecutions, to smother testimony, or to listen to it with bias, when, if the punishment were only proportioned to the injury, men would feel it their inclination, as well as their duty, to see the laws observed.

For rendering crimes and punishments, therefore, more proportionate to each other:

Be it enacted by the General Assembly, that no crime shall be henceforth punished by the depriva-

tion of life or limb,[1] except those hereinafter ordained to be so punished.

[2] If a man do levy war[3] against the Commonwealth [*in the same*], or be adherent to the enemies of the Commonwealth [*within the same*],[4] giving to them aid or comfort in the Commonwealth, or elsewhere, and thereof be convicted of open deed, by the evidence of two sufficient witnesses, or his own voluntary confession, the said cases, and no[5] others, shall be

[1] This takes away the punishment of cutting off the hand of a person striking another, or drawing his sword in one of the superior courts of justice. Stamf. P. C. 38. 33. H. 8. c. 12. In an earlier stage of the Common law, it was death. Gif hwa gefeohte on Cyninges huse sy he scyldig ealles his yrfes, and sy on Cyninges dome hwæther he lif age de nage: si quis in regis domo pugnet, perdat omnem suam haereditatem, et in regis sit arbitrio, possideat vitam an non possideat. Ll. Inae. 6. Gif hwa on Cyninges healle gefeohte, oththe his wæpne gebrede, and hine mon gefo, sy thæt on Cyninges dome swa death, swa lif, swa he him forgyfan wille: si quis in aula regia pugnet, vel arma sua extrahat et capiatur, sit in regis arbitrio tam mors quam vita, sicut ei condonare voluerit. Ll. Alfr. 7. Gif hwa on Cyninges hirede gefeohte tholige thæt lifes, buton se Cyning him gearian wille: si quis in regia dimicat, perdat vitam, nisi rex hoc illi eondonare velit. Ll. Cnuti. 56. 4. Bl. 125.

[2] 25. E. 3. st. 5. c. 2. 7. W. 3. c. 3. § 2.

[3] Though the crime of an accomplice in treason is not here described, yet, Lord Coke says, the partaking and maintaining a treason herein described, makes him a principal in that treason: it being a rule that in treason all are principals. 3 Inst. 138. 2 Inst. 590. 1 H. 6. 5.

[4] These words in the English statute narrow its operation. A man adhering to the enemies of the Commonwealth, in a foreign country, would certainly not be guilty of treason with us, if these words be retained. The convictions of treason of that kind in England have been under that branch of the statute which makes the compassing the king's death treason. Foster 196. 197. But as we omit that branch, we must by other means reach this flagrant case.

[5] The stat. 25. E. 3. directs all other cases of treasons to await the opinion of Parliament. This has the effect of negative words, excluding all other treasons. As we drop that part of the statute,

adjudged treasons which extend to the Commonwealth, and the person so convicted shall suffer death, by hanging,[1] and shall forfeit his lands and goods to the Commonwealth.

If any person commit petty treason, or a husband murder his wife, a parent[2] his child, or a child his

we must, by negative words, prevent an inundation of common law treasons. I strike out the word "it," therefore, and insert "the said cases, and no others." Quære, how far those negative words may affect the case of accomplices above mentioned? Though if their case was within the statute, so as that it needed not await the opinion of Parliament, it should seem to be also within our act, so as not to be ousted by the negative words.

[1] This implies "by the neck." See 2 Hawk. 544. notes n. o.

[2] By the stat. 21. Jac. 1. c. 27. and Act Ass. 1170. c. 12. concealment by the mother of the death of a bastard child is made murder. In justification of this, it is said, that shame is a feeling which operates so strongly on the mind, as frequently to induce the mother of such a child to murder it, in order to conceal her disgrace. The act of concealment, therefore, proves she was influenced by shame, and that influence produces a presumption that she murdered the child. The effect of this law then is, to make what, in its nature, is only presumptive evidence of a murder conclusive of that fact. To this I answer, 1. So many children die before or soon after birth, that to presume all those murdered who are found dead, is a presumption which will lead us oftener wrong than right, and consequently would shed more blood than it would save. 2. If the child were born dead, the mother would naturally choose rather to conceal it, in hopes of still keeping a good character in the neighborhood. So that the act of concealment is far from proving the guilt of murder on the mother. 3. If shame be a powerful affection of the mind, is not parental love also? Is it not the strongest affection known? Is it not greater than even that of self-preservation? While we draw presumptions from shame, one affection of the mind, against the life of the prisoner, should we not give some weight to presumptions from parental love, an affection at least as strong, in favor of life? If concealment of the fact is a presumptive evidence of murder, so strong as to overbalance all other evidence that may possibly be produced to take away the presumption, why not trust the force of this incontestable presumption to the

parent, he shall suffer death by hanging, and his body be delivered to Anatomists to be dissected.

Whosoever committeth murder by poisoning shall suffer death by poison.

Whosoever committeth murder by way of duel shall suffer death by hanging; and if he were the challenger, his body, after death, shall be gibbetted.[1] He who removeth it from the gibbet shall be guilty of a misdemeanor; and the officer shall see that it be replaced.

Whosoever shall commit murder in any other way shall suffer death by hanging.

And in all cases of Petty treason and murder, one half of the lands and goods of the offender, shall be forfeited to the next of kin to the person killed, and the other half descend and go to his own representa-

jury, who are, in a regular course, to hear presumptive, as well as positive testimony? If the presumption arising from the act of concealment, may be destroyed by proof positive or circumstantial to the contrary, why should the legislature preclude that contrary proof? Objection. The crime is difficult to prove, being usually committed in secret. Answer. But circumstantial proof will do; for example, marks of violence, the behavior, countenance, &c. of the prisoner, &c. And if conclusive proof be difficult to be obtained, shall we therefore fasten irremovably upon equivocal proof? Can we change the nature of what is contestable, and make it incontestable? Can we make that conclusive which God and nature have made inconclusive? Solon made no law against parricide, supposing it impossible that any one could be guilty of it; and the Persians, from the same opinion, adjudged all who killed their reputed parents to be bastards; and although parental be yet stronger than filial affection, we admit infanticide proved on the most equivocal testimony, whilst they rejected all proof of an act certainly not more repugnant to nature, as of a thing impossible, unprovable. See Beccaria, § 31.

[1] 25. G. 2. c. 37.

tives. Save only, where one shall slay the challenger in a duel,[1] in which case, no part of his lands or goods shall be forfeited to the kindred of the party slain, but, instead thereof, a moiety shall go to the Commonwealth.

The same evidence[2] shall suffice, and order and course[3] of trial be observed in cases of Petty Treason, as in those of other[4] murders.

Whosoever shall be guilty of manslaughter,[5] shall, for the first offence, be condemned to hard[6] labor

[1] Quære, if the estates of both parties in a duel, should not be forfeited? The deceased is equally guilty with a suicide.

[2] Quære, if these words may not be omitted? By the Common law, one witness in treason was sufficient. Foster 233. Plowd. 8. a. Mirror c. 3. § 34. Waterhouse on Fortesc. de laud. 252. Carth. 144. per. Holt. But Lord Coke, contra 3 inst. 26. The stat. 1. E. 6. c. 12. & 5. E. 6. c. 11. first required two witnesses in treason. The clause against high treason supra, does the same as to high treason; but it seems if 1st and 5th E. 6. are dropped, Petty treason will be tried and proved, as at Common law, by one witness. But quære, Lord Coke being contra, whose opinion it is ever dangerous to neglect.

[3] These words are intended to take away the peremptory challenge of thirty-five jurors. The same words being used 1. 2. Ph. & M. c. 10. are deemed to have restored the peremptory challenge in high treason; and consequently are sufficient to take it away. Foster 237

[4] Petty treason is considered in law only as an aggravated murder. Foster 107. 323. A pardon of all murders, pardons Petty treason. 1 Hale P. C. 378. see 2 H. P. C. 340. 342. It is also included in the word "felony," so that a pardon of all felonies, pardons Petty treason.

[5] Manslaughter is punishable at law, by burning in the hands, and forfeiture of chattels.

[6] It is best, in this act, to lay down principles only, in order that it may not forever be undergoing change; and, to carry into effect the minuter parts of it, frame a bill "for the employment and government of felons, or malefactors, condemned to labor for the Commonwealth," which may serve as an Appendix to this, and in which all the particulars requisite may be directed; and as experience will, from time to

for seven years in the public works, shall forfeit one half of his lands and goods to the next of kin to the person slain; the other half to be sequestered during such term, in the hands and to the use of the Commonwealth, allowing a reasonable part of the profits for the support of his family. The second offence shall be deemed murder.

And where persons, meaning to commit a trespass[1] only, or larceny, or other unlawful deed, and doing an act from which involuntary homicide hath ensued, have heretofore been adjudged guilty of manslaughter, or of murder, by transferring such their unlawful intention to an act, much more penal than they could have in probable contemplation; no such case shall hereafter be deemed manslaughter, unless manslaughter was intended, nor murder, unless murder was intended.

In other cases of homicide, the law will not add to the miseries of the party, by punishments and forfeitures.[2]

time, be pointing out amendments, these may be made without touching this fundamental act. See More's Utopia p. 50. for some good hints. Fugitives might, in such a bill, be obliged to work two days for every one they absent themselves.

[1] The shooting at a wild fowl, and killing a man, is homicide by misadventure. Shooting at a pullet, without any design to take it away, is manslaughter; and with a design to take it away, is murder. 6 Sta. tr. 222. To shoot at the poultry of another, and thereby set fire to his house, is arson, in the opinion of some. Dalt. c. 116. 1 Hale's P. C. 569. c. contra.

[2] Beccaria. § 32. Suicide. Homicides are, 1. Justifiable. 2. Excusable. 3. Felonious. For the last, punishments have been already provided. The first are held to be totally without guilt, or rather com-

Whenever sentence of death shall have been pronounced against any person for treason or murder, execution shall be done on the next day but one

mendable. The second are in some cases not quite unblamable. These should subject the party to marks of contrition; viz., the killing of a man in defence of property; so also in defence of one's person, which is a species of excusable homicide, because, although cases may happen where these also are commendable, yet most frequently they are done on too slight appearance of danger; as in return for a blow, kick, fillip, &c.; or on a person's getting into a house, not animo furandi, but perhaps veneris causa, &c. Bracton says, "si quis furem nocturnum occident, ita demum impune foret, si parcere ei sine periculo suo non potuit, si autem potuit, aliter erit. Item erit si quis hamsokne quae dicitur invasio domus contra pacem domini regis in domo sua se defenderit, et invasor occisus fuerit; impersecutus et insultus remanebit, si ille quem invasit aliter se defendere non potuit; dicitur enim quod non est dignus habere pacem qui non vult observare eam." L. 3. c. 23. § 3. "Qui latronem occiderit, non tenetur, nocturnum vel diurnum, si aliter periculum evadere non possit; tenetur tamen si possit. Item non tenetur si per infortunium, et non animo et voluntate occidendi, nec dolus, nec culpa ejus inveniatur." L. 3. c. 36. § 1. The stat. 24. H. 8. c. 5. is therefore merely declaratory of the Common law. See on the general subject Puffend. 2. 5. § 10. 11. 12. 16. 17. Excusable homicides are by misadventure, or in self-defence. It is the opinion of some lawyers, that the Common law punished these with death, and that the statute of Marlbridge, c. 26. and Gloucester, c. 9. first took away this by giving them title to a pardon, as matter of right, and a writ of restitution of their goods. See 2. Inst. 148. 315. 3. Inst. 55. Bracton L. 3. c. 4. § 2. Fleta L. 1. c. 23. § 14. 15. 21. E. 3. 23. But it is believed never to have been capital. 1. H. P. C. 425. 1. Hawk. 75. Foster, 282. 4. Bl. 188. It seems doubtful also, whether at Common law, the party forfeited all his chattels in this case, or only paid a weregild. Foster, ubi supra, doubts, and thinks it of no consequence, as the statute of Gloucester entitles the party to Royal grace, which goes as well to forfeiture as life. To me there seems no reason for calling these excusable homicides, and the killing a man in defence of property, a justifiable homicide. The latter is less guiltless than misadventure or self-defence.

Suicide is by law punishable by forfeiture of chattels. This bill exempts it from forfeiture. The suicide injures the State less than he

after such sentence, unless it be Sunday, and then on the Monday following.[1]

Whosoever shall be guilty of Rape,[2] Polyg-

who leaves it with his effects. If the latter then be not punished, the former should not. As to the example, we need not fear its influence. Men are too much attached to life, to exhibit frequent instances of depriving themselves of it. At any rate, the quasi-punishment of confiscation will not prevent it. For if one be found who can calmly determine to renounce life, who is so weary of his existence here, as rather to make experiment of what is beyond the grave, can we suppose him, in such a state of mind, susceptible of influence from the losses to his family from confiscation? That men in general, too, disapprove of this severity, is apparent from the constant practice of juries finding the suicide in a state of insanity; because they have no other way of saving the forfeiture. Let it then be done away.

[1] Beccaria. § 19. 25. G. 2. c. 37.

[2] 13. E. 1. c. 34. Forcible abduction of a woman having substance, is felony by 3. H. 7. c. 2. 3. Inst. 61. 4. Bl. 208. If goods be taken, it will be felony as to them, without this statute; and as to the abduction of the woman, quære if not better to leave that, and also kidnapping, 4. Bl. 219. to the Common law remedies, viz., fine, imprisonment, and pillory, Raym. 474. 2 Show. 221. Skin. 47. Comb. 10. the writs of Homine replegiando, Capias in Withernam, Habeas corpus, and the action of trespass? Rape was felony at the Common law. 3. Inst. 60. but see 2. Inst. 181. further—for its definition see 2. Inst. 180. Bracton, L. 3. c. 28. § 1. says the punishment of rape is "amissio membrorum, ut sit membrum pro membro, quia virgo, cum corrumpitur, membrum amittit, et ideo corruptor puniatur in eo in quo deliquit; oculos igitur amittat propter aspectum decoris quo virginem concupivit; amittat et testiculos qui calorem stupri induxerunt. Olim quidem corruptores virginitatis et castitatis suspendebantur et eorum fautores, &c. Modernis tamen temporibus aliter observatur," &c. And Fleta, "solet justiciarius pro quolibet mahemio ad amissionem testiculorum vel oculorum convictum condemnare, sed non sine errore, eo quod id judicium nisi in corruptione virginum tantum competebat; nam pro virginitatis corruptione solebant abscidi et merito judicari, ut sic pro membro quod abstulit, membrum per quod deliquit amitteret, viz., testiculos, qui calorem stupri induxerunt," &c. Fleta, L. 1. c. 40. § 4. "Gif theow man theowne to nydhed genyde, gabte mid his eowende:" "Si servus servam ad stuprum coegerit, compenset hoc

amy,[1] or Sodomy[2] with man or woman, shall be punished, if a man, by castration,[3] if a woman, by cutting through the cartilage of her nose a hole of one half inch in diameter at the least.

virga sua virili. Si quis puellam," &c. Ll. Aelfridi. 25. "Hi purgist femme per forze forfait ad les membres." Ll. Gul. conq. 19. In Dyer, 305, a man was indicted, and found guilty of a rape on a girl of seven years old. The court "doubted of the rape of so tender a girl; but if she had been nine years old, it would have been otherwise." 14. Eliz. Therefore the statute 18. Eliz. c. 6. says, "For plain declaration of law, be it enacted, that if any person shall unlawfully and carnally know and abuse any woman child, under the age of ten years, &c., he shall suffer as a felon, without allowance of clergy." Lord Hale, however, 1. P. C. 630. thinks it rape independent of that statute, to know carnally, a girl under twelve, the age of consent. Yet 4. Bl. 212. seems to neglect this opinion; and as it was founded on the words of 3. E. 1. c. 13. and this is with us omitted, the offence of carnally knowing a girl under twelve, or ten years of age, will not be distinguished from that of any other.

[1] 1. Jac. 1. c. 11. Polygamy was not penal till the statute 1. Jac. The law contented itself with the nullity of the act. 4. Bl. 163. 3. Inst. 88.

[2] 25. H. 8. c. 6. Buggery is twofold. 1. With mankind, 2. with beasts. Buggery is the Genus, of which Sodomy and Bestiality, are the species. 12. Co. 37. says, "note that Sodomy is with mankind." But Finch's L. B. 3. c. 24. "Sodomiary is a carnal copulation against nature, to wit, of man or woman in the same sex, or of either of them with beasts." 12. Co. 36. says, "it appears by the ancient authorities of the law that this was felony." Yet the 25. H. 8. declares it felony, as if supposed not to be so. Britton, c. 9. says, that Sodomites are to be burnt. F. N. B. 269. b. Fleta, L. 1. c. 37. says, "pecorantes et Sodomitae in terra vivi confodiantur." The Mirror makes it treason. Bestiality can never make any progress; it cannot therefore be injurious to society in any great degree, which is the true measure of criminality in foro civili, and will ever be properly and severely punished, by universal derision. It may, therefore, be omitted. It was anciently punished with death, as it has been latterly. Ll. Aelfrid. 31. and 25. H. 8. c. 6. see Beccaria. § 31. Montesq.

[3] Bracton, Fleta, &c.

But no one shall be punished for Polygamy, who shall have married after probable information of the death of his or her husband or wife, or after his or her husband or wife, hath absented him or herself, so that no notice of his or her being alive hath reached such person for seven years together, or hath suffered the punishments before prescribed for rape, polygamy, or sodomy.

Whosoever, on purpose, and of malice forethought shall maim[1] another, or shall disfigure him, by cutting out or disabling the tongue, slitting or cutting off a nose, lip, or ear, branding, or otherwise, shall be maimed, or disfigured in like[2] sort: or if that cannot

[1] 22. 23. Car. 2. c. 1. Maiming was felony at the Common law. Britton, c. 25. "Mahemium autem dici poteri, aubi aliquis in aliqua parte sui corparis laesionem acceperit, per quam affectus sit inutilis ad pugnandum: ut si manus amputetur, vel pes, oculus privetur, vel scerda de osse capitis laveter, vel si quis dentes praecisores amiserit, vel castratus fuerit, et talis pro mahemiato poterit adjudicari." Fleta, L. 1. c. 40. "Et volons que nul maheme ne soit tenus forsque de membre tollet dount home est plus feble a combatre, sicome del oyl, ou de la mayn, ou del pie, ou de la tete debruse, ou de les dentz devant." Britton, c. 25. For further definitions, see Bracton, L. 3. c. 24. § 3. 4. Finch L. B. 3. c. 12. Co. L. 126. a. b. 288. a. 3. Bl. 121. 4. Bl. 205. Stamf. P. C. L. 1. c. 41. I do not find any of these definitions confine the offence to wilful and malicious perpetrations of it. 22. 23. Car. 2. c. 1. called the Coventry act, has the words "on purpose and of malice forethought." Nor does the Common law prescribe the same punishment for disfiguring, as for maiming.

[2] The punishment was by retaliation. "Et come ascun appele serra de tele felonie atteint et attende jugement, si soit le judgment tiel que il perde autriel membre come il avera tollet al pleintyfe. Et sy la pleynte soi faite de femme que avera tollet a home ses membres, en tiel cas perdra la femme la une meyn par jugement, come le membre dount ele axera trespasse." Britton, c. 25. Fleta, B. 1. c. 40. Ll. Aelfr. 19. 40.

be, for want of the same part, then as nearly as may be, in some other part of at least equal value and estimation, in the opinion of a jury, and moreover, shall forfeit one half of his lands and goods to the sufferer.

Whosoever shall counterfeit[1] any coin, current by law within this Commonwealth, or any paper bills issued in the nature of money, or of certificates of loan on the credit of this Commonwealth, or of all or any of the United States of America, or any Inspectors' notes for tobacco, or shall pass any such

[1] 25. E. 3. st. 5. c. 2. 5. El. c. 11. 18. El. c. 1. 8. 9. W. 3. c. 26. 15. 16. G. 2. c. 28. 7. Ann. c. 25. By the laws of Aethelstan and Canute, this was punished by cutting off the hand. "Gif se mynetere ful wurthe slea man tha hand of, the he that ful mid worthe and sette uppon tha mynet smiththan." In English characters and words "if the minter foul [criminal] wert, slay the hand off, that he the foul [crime] with wrought, and set upon the mint-smithery." Ll. Aethelst. 14. "Et si quis praeter hanc, falsam fecerit, perdat manum quacum falsam confecit." Ll. Cnuti. 8. It had been death by the Ll. Aethelredi sub fine. By those of H. 1. "si quis cum falso denario inventus fuerit—fiat justitia mea, saltem de dextro pugno et de testiculis." Anno 1108. Operae pretium vero est audire quam severus rex fuerit in pravos. Monetarios enim fere omnes totius Angliae fecit ementulari, et manus dextras abscindi, quia monetam furtive corruperant. Wilkins ib. et anno 1125. When the Common law became settled, it appears to have been punishable by death. "Est aluid genus criminis quod sub nomine falsi continetur, et tangit coronam domini regis, et ultimum inducit supplicium, sicut de illis qui falsam fabricant monetam, et qui de re non reproba, faciunt reprobam; sicut sunt retonsores denariorum. Bract. L. 3. c. § 2. Fleta, L. 1. c. 22. § 4. Lord Hale thinks it was deemed petty treason at common law. 1. H. P. C. 220. 224. The bringing in false money with *intent* to merchandize, and make payment of it, is treason, by 25. E. 3. But the best proof of the intention, is the act of passing it, and why not leave room for repentance here, as in other cases of felonies intended? 1. H. P. C. 229.

counterfeit coin, paper, bills, or notes, knowing them to be counterfeit; or, for the sake of lucre, shall diminish,[1] case, or wash any such coin, shall be condemned to hard labor six years in the public works, and shall forfeit all his lands and goods to the Commonwealth.

[2] Whosoever committeth Arson, shall be condemned to hard labor five years in the public works, and shall make good the loss of the sufferers threefold.[3]

[1] Clipping, filing, rounding, impairing, scaling, lightening, (the words in the statutes) are included in "diminishing;" gilding, in the word "casing;" coloring in the word "washing;" and falsifying, or making, is "counterfeiting."

[2] 43. L. c. 13. confined to four counties. 22. 23. Car. 2. c. 7. 9. G. 1. c. 22. 9. G. 3. c. 29.

[3] Arson was a felony at Common law—3. Inst. 66; punished by a fine, Ll. Aethelst. 6. But Ll. Cnuti. 61. make it a "scelus inexpiable." "Hus brec and bærnet and open thyfth æberemorth and hlaford swice æfter woruld laga is botleds." Word for word, "house break and burnt, and open theft, and manifest murther, and lord-treachery, after-world's law is bootless." Bracton says it was punished by death. "Si quis turbida seditione incendium fecerit nequiter et in felonia, vel ob inimicitias, vel praedandi causa, capitali puniatur poena vel sententia." Bract. L. 3. 27. He defines it as commissible by burning "aedes alienas." Ib. Britton, c. 9. "Ausi soit enquis de ceux que felonisement en temps de pees eient autre *blees* ou autre *mesons* ars, et ceux que serrount de ceo atteyntz, soient ars issint que eux soient punys par mesme cele chose dount ilz pecherent." Fleta, L. 1. c. 37. is a copy of Bracton. The Mirror c. 1. § 8. says, "Ardours sont que ardent citie, ville, maison home, maison beast, ou auters chatelx, de lour felonie en temps de pace pour haine ou vengeance." Again, c. 2. § 11. pointing out the words of the appellor "jeo dise que Sebright, &c., entiel meason ou *biens* mist de feu." Coke 3. Inst. 67. says, "the ancient authors extended this felony further than houses, viz., to sacks of corn, waynes or carts of coal, wood or other goods." He denies it as commissible, not only on the inset houses, parcel of the mansion

If any person shall, within this Commonwealth, or being a citizen thereof, shall without the same, wilfully destroy,[1] or run[2] away with any sea-vessel, or goods laden on board thereof, or plunder or pilfer any wreck, he shall be condemned to hard labor five years in the public works, and shall make good the loss of the sufferers threefold.

Whosoever committeth Robbery[3] shall be condemned to hard labor four years in the public works, and shall make double reparation to the persons injured.

Whatsoever act, if committed on any Mansion house, would be deemed Burglary,[4] shall be Bur-

house, but the outset also, as barn, stable, cowhouse, sheep house, dairy house, mill house, and the like, parcel of the mansion house. But "burning of a barn, being no parcel of a mansion house, is no felony," unless there be corn or hay within it. Ib. The 22. 23. Car. 2. and 9. G. 1. are the principal statutes against arson. They extend the offence beyond the Common law.

[1] 1. Ann. st. 2. c. 9. 12. Ann. c. 18. 4. G. 1. c. 12. 26. G. 2. c. 19.

[2] 11. 12. W. 3. c. 7.

[3] Robbery was a felony at Common law. 3 Inst. 68. "Scelus inexpiable," by the Ll. Cnuti. 61. [See before in Arson.] It was punished with death. Britt. c. 15, "de robbours et de larouns et de semblables mesfesours, soit ausi ententivement enquis—et tauntost soient ceux robbours juges a la mort." Fleta says, "si quis convictus fuerit de bonis viri robbatis vel asportatis ad sectam regis judicium capitale subibit. L. 1. c. 39. See also Bract. L. 3. c. 32. § 1.

[4] Burglary was felony at the Common law. 3 Inst. 63. It was not distinguished by ancient authors, except the Mirror, from simple House-breaking, ib. 65. Burglary and House-breaking were called "Hamsockne diximus etiam de pacis violatione et de immunitatibus domus, si quis hoc in posterum fecerit ut perdat omne quod habet, et sit in regis arbitrio utrum vitam habeat. Eac we quædon be mundbryce and be ham socnum, sethe hit ofer this do thæt he dolie ealles thæs the age, and sy on Cyninges dome hwæther he life age; and we quoth of

glary, if committed on any other house; and he, who is guilty of Burglary, shall be condemned to hard labor four years in the public works, and shall make double reparation to the persons injured.

Whatsoever act, if committed in the night time, shall constitute the crime of Burglary, shall, if committed in the day, be deemed House-breaking;[1] and

mound-breach, and of home-seeking he who it after this do, that he dole all that he owe [owns], and is in king's doom whether he life owes [owns]. Ll. Eadmundi. c. 6. and see Ll. Cnuti. 61. "hus brec," in notes on Arson. ante. A Burglar was also called a Burgessor. "Et soit enquis de Burgessours et sunt tenus Burgessours trestous ceux que *felonisement* en temps de pees debrusont esglises ou auter mesons, ou murs ou portes de nos cytes, ou de nos Burghes." Britt. c. 10. "Burglaria est nocturna diruptio habitaculi alicujus, vel ecclesiae, etiam murorum, partarumve civitatis aut burgi, ad feloniam aliquam perpetrandam. *Noctanter* dico, recentiores secutus; veteres enim hoc non adjungunt. Spelm. gloss. verb. Burglaria. It was punished with death. Ib. citn. from the office of a Coroner. It may be committed in the outset houses, as well as inset. 3 Inst. 65. though not under the same roof or contiguous, provided they be within the Curtilage or Homestall. 4 Bl. 225. As by the Common law, all felonies were clergiable, the stat. 23 H. 8. c. 1. 5. E. 6. c. 9. and 18 El. c. 7. first distinguished them, by taking the clerical privilege of impunity from the principals, and 3. 4. W. M. c. 9. from accessories before the fact. No *statute* defines what Burglary is. The 12 Ann. c. 7. decides the doubt whether, where breaking is subsequent to entry, it is Burglary. Bacon's Elements had affirmed, and 1. H. P. C. 554. had denied it. Our bill must distinguish them by different degrees of punishment.

[1] At the Common law, the offence of Housebreaking was not distinguished from Burglary, and neither of them from any other larceny. The statutes at first took away clergy from Burglary, which made a leading distinction between the two offences. Later statutes, however, have taken clergy from so many cases of Housebreaking, as nearly to bring the offences together again. These are 23 H. 8. c. 1. 1. E. 6. c. 12. 5 and 6 E. 6. c. 9. 3 and 4 W. M. c. 9. 39 El. c. 15. 10 and 11 W. 3 c. 23. 12 Ann. c. 7. See Barr. 428. 4 Bl. 240. The circumstances which in these statutes characterize the offence. seem to have

whosoever is guilty thereof, shall be condemned to hard labor three years in the public works, and shall make reparation to the persons injured.

Whosoever shall be guilty of Horse-stealing,[1] shall be condemned to hard labor three years in the public works, and shall make reparation to the person injured.

Grand Larceny[2] shall be where the goods stolen are of the value of five dollars; and whosoever shall be guilty thereof, shall be forthwith put in the pillory for one half hour, shall be condemned to hard labor[3]

been occasional and unsystematical. The houses on which Burglary may be committed, and the circumstances which constitute that crime being ascertained, it will be better to define Housebreaking by the same subjects and circumstances, and let the crimes be distinguished only by the hour at which they are committed, and the degree of punishment.

[1] The offence of Horse-stealing seems properly distinguishable from other larcenies, here, where these animals generally run at large, the temptation being so great and frequent, and the facility of commission so remarkable. See 1 E. 6. c. 12. 23 E. 6. c. 33. 31 El. c. 12.

[2] The distinction between grand and petty larceny, is very ancient. At first 8d. was the sum which constituted grand larceny. Ll. Aethelst. c. 1. "Ne parcatur ulli furi, qui furtum manutenens captus sit, supra 12. annos nato, et supra 8. denarios." Afterwards, in the same king's reign it was raised to 12d. "non parcatur alicui furi ultra 12 denarios, et ultra 12 annos nato—ut occidemus illum et capiamus omne quod possidet, et imprimis sumamus rei furto ablatae pretium ab haerede, ac dividatur postea reliquum in duas partes, una pars uxori, si munda, et facinoris conscia non sit; et residuum in duo, dimidium capiat rex, dimidium societas." Ll. Aethelst. Wilkins, p. 65.

[3] Ll. Inae. c. 7. "Si quis furetur ita ut uxor ejus et infans ipsius nesciant, solvat 60. solidos poenae loco. Si autem furetur testantibus omnibus haeredibus suis, *abeant omnes in servitutem.*" Ina was king of the West-Saxons, and began to reign A. C. 688. After the union of

two years in the public works, and shall make reparation to the person injured.

Petty Larceny shall be, where the goods stolen are of less value than five dollars; and whosoever shall be guilty thereof, shall be forthwith put in the pillory for a quarter of an hour, shall be condemned to hard labor one year in the public works, and shall make reparation to the person injured.

Robbery[1] or larceny of bonds, bills obligatory, bills of exchange, or promissory notes for the pay-

the Heptarchy, i. e. temp. Aethelst. inter 924 and 940, we find it punishable with death as above. So it was inter 1017 and 1035, i. e. temp. Cnuti. Ll. Cnuti 61. cited in notes on Arson. In the time of William the Conqueror, it seems to have been made punishable by fine only. Ll. Gul. conq. apud Wilk. p. 218, 220. This commutation, however, was taken away by Ll. H. 1. anno 1108. "Si quis in furto vel latrocinio deprehensus fuisset, suspenderetur; sublata wirgildorum, id est, pecuniarae redemptionis lege." Larceny is the felonious taking and carrying away of the personal goods of another. 1. As to the taking, the 3. 4. W. M. c. 9 § 5. is not additional to the Common law, but declaratory of it; because where only the care or use, and not the possession, of things is delivered, to take them was larceny at the Common law. The 33. H. 6. c. 1. and 21 H. 8. c. 7. indeed, have added to the Common law, by making it larceny in a servant to convert things of his master's. But quære, if they should be imitated more than as to other breaches of trust in general? 2. As to the subject of larceny, 4 G. 2. c. 32. 6 G. 3. c. 36. 48. 43. El. c. 7. 15. Car. 2. c. 2. 23. G. 2. c. 26. 31. G. 2. c. 35. 9. G. 3. c. 41. 25. G. 2. c. 10. have extended larceny to things of various sorts either real, or fixed to the reality. But the enumeration is unsystematical, and in this country, where the produce of the earth is so spontaneous, as to have rendered things of this kind scarcely a breach of civility or good manners, in the eyes of the people, quære, if it would not too much enlarge the field of Criminal law? The same may be questioned of 9 G. 1. c. 22. 13 Car. 2. c. 10. 10 G. 2. c. 32. 5 G. 3. c. 14. 22 and 23 Car. 2. c. 25. 37 E. 3. c. 19. making it felony to steal animals feræ naturæ.

[1] 2 G. 2. c. 25. § 3. 7. G. 3. c. 50.

ment of money or tobacco, lottery tickets, paper bills issued in the nature of money, or of certificates of loan on the credit of this Commonwealth, or of all or any of the United States of America, or Inspectors' notes for tobacco, shall be punished in the same manner as robbery or larceny of the money or tobacco due on, or represented by such papers.

Buyers[1] and receivers of goods taken by way of robbery or larceny, knowing them to have been so taken, shall be deemed accessaries to such robbery or larceny after the fact.

Prison-breakers,[2] also, shall be deemed accessaries after the fact, to traitors or felons whom they enlarge from prison.[3]

[1] 3. 4. W. M. c. 9. § 4. 5 Ann. c. 31. § 5. 4 G. 1. c. 11. § 1.

[2] 1 E. 2.

[3] Breach of prison at the Common law was capital, without regard to the crime for which the party was committed. "Cum pro criminis qualitate in carcerem recepti fuerint, conspiraverint (ut ruptis vinculis aut fracto carcere) evadant, amplius (quam causa pro qua recepti sunt exposeit) puniendi sunt, videlicet ultimo supplicio, quamvis ex eo crimine innocentes inveniantur, propter quod inducti sunt in carcerem et imparcati." Bracton L. 3. c. 9. § 4. Britt. c. 11. Fleta, L. 1. c. 26. § 4. Yet in the Y. B. Hill. 1. H. 7. 2. Hussey says, that by the opinion of Billing and Choke, and all the justices, it was a felony in strangers only, but not in the prisoner himself. S. C. Fitz. Abr. Coron. 48. They are principal felons, not accessories. ib. Whether it was felony in the prisoner at Common law, is doubted. Stam. P. C. 30. b. The Mirror c. 5. § 1, says, "abusion est a tener escape de prisoner, ou de bruserie del gaole pur peche mortell, car cel usage nest garrant per nul ley, ne in nul part est use forsque in cest realme, et en France, eins [mais] est leu garrantie de ceo faire per la ley de nature." 2 Inst. 589. The stat. 1. E. 2. de fraugentibus prisonam, restrained the judgment of life and limb for prison breaking, to cases where the offence of the prisoner required such judgment.

All attempts to delude the people, or to abuse their understanding by exercise of the pretended arts of witchcraft, conjuration, enchantment, or sorcery, or by pretended prophecies, shall be punished by ducking and whipping, at the discretion of a jury, not exceeding fifteen stripes.[1]

If the principal offenders be fled,[2] or secreted from justice, in any case not touching life or member, the

It is not only vain, but wicked, in a legislator to frame laws in opposition to the laws of nature, and to arm them with the terrors of death. This is truly creating crimes in order to punish them. The law of nature impels every one to escape from confinement; it should not, therefore, be subjected to punishment. Let the legislator restrain his criminal by walls, not by parchment. As to strangers breaking prison to enlarge an offender, they should, and may be fairly considered as accessaries after the fact. This bill says nothing of the prisoner releasing himself by breach of jail, he will have the benefit of the first section of the bill, which repeals the judgment of life and death at the common law.

[1] Gif wiccan owwe wigleras nansworan, owwe morthwyrhtan owwe fule afylede æbere horcwenan ahwhar on lande wurthan agytene, thonne fyrsie man of earde and clænsie tha theode, owwe on earde forfare hi mid ealle, buton hi geswican and the deoper gebetan: if witches, or weirds, man-swearers, or murther-wroughters, or foul, defiled, open whore-queens, aywhere in the land were gotten, then force them off earth, and cleanse the nation, or in earth forth-fare them withal, buton they beseech, and deeply better. Ll. Ed. et Guthr. c. 11. "Sagae, mulieres barbara, factitantes sacrificia, aut pestiferi, si cui mortem intulerint, neque id inficiari poterint, capitis poena esto." Ll. Aethelst. c. 6. apud Lambard. Ll. Aelfr. 30. Ll. Cnuti. c. 4. "Mesme cel jugement (d'etrears) eyent sorcers, et sorceresses, &c. ut supra. Fleta ut et ubi supra. 3. Inst. 44. Trial of witches before Hale in 1664. The statutes 33 H. 8. c. 8. 5. El. c. 16 and 1. Jac. 1. c. 12. seem to be only in confirmation of the Common law. 9 G. 2. c. 25. punishes them with pillory, and a year's imprisonment. 3 E. 6. c. 15. 5 El. c. 15. punish fond, fantastical and false prophecies, by fine and imprisonment.

[2] 1 Ann. c. 9. § 2.

accessaries may, notwithstanding, be prosecuted as if their principal were convicted.[1]

If any offender stand mute of obstinacy,[2] or challenge peremptorily more of the jurors than by law he may, being first warned of the consequence thereof, the court shall proceed as if he had confessed the charge.[3]

Pardon and Privilege of clergy, shall henceforth be abolished, that none may be induced to injure through hope of impunity. But if the verdict be against the defendant, and the court before whom the offence is heard and determined, shall doubt that it may be untrue for defect of testimony, or other cause, they may direct a new trial to be had.[4]

[1] As every treason includes within it a misprision of treason, so every felony includes a misprision, or misdemeanor. 1 Hale P. C. 652. 708. "Licet fuerit felonia, tamen in eo continetur misprisio." 2 R. 3. 10. Both principal and accessary, therefore, may be proceeded against in any case, either for felony or misprision, at the Common law. Capital cases not being mentioned here, accessaries to them will of course be triable for misprisions, if the offender flies.

[2] E. 1. c. 12.

[3] Whether the judgment of penance lay at Common law. See 2 Inst. 178. 2 H. P. C. 321. 4 Bl. 322. It was given on standing mute; but on challenging more than the legal number, whether that sentence, or sentence of death is to be given, seems doubtful. 2 H. P. C. 316. Quære, whether it would not be better to consider the supernumerary challenge as merely void, and to proceed in the trial? Quære too, in case of silence?

[4] "Cum Clericus sic de crimine convictus degradetur non sequitur alia poena pro uno delicto, vel pluribus ante degradationem perpetratis. Satis enim sufficit ei pro poena degradatio, quae est magna capitis diminutio, nisi forte convictus fuerit de apostatia, quia hinc primo degradetur, et postea per manum laicalem comburetur, secundum quod accidit in concilio Oxoni celebrato a bonae memoriae S. Cantuanen. Archiepiscopo de quodam diacono, qui se apostatavit pro

No attainder shall work corruption of blood in any case.

In all cases of forfeiture, the widow's dower shall be saved to her, during her title thereto; after which

quadam Judaea; qui cum esset per episcopum degradatus, statim fuit igni traditus per manum laicalem." Bract. L. 3. c. 9. § 2. "Et mesme cel jugement (i. e. qui ils soient ars) eyent sorcers et sorceresses, et sodomites et mescreauntz apertement atteyntz." Britt. c. 9. "Christiani autem Apostatae, sortilegii, et hujusmodi detractari debent et comburi." Fleta, L. 1. c. 37. § 2. see 3. Inst. 39. 12. Rep. 92. 1. H. P. C. 393. The extent of the clerical privilege at the Common law. 1. As to the crimes, seems very obscure and uncertain. It extended to no case where the judgment was not of life, or limb. Note in 2. H. P. C. 326. This therefore excluded it in trespass, petty larceny, or killing se defendendo. In high treason against the person of the King, it seems not to have been allowed. Note 1. H. P. C. 185. Treasons, therefore, not against the King's person immediately, petty treasons and felonies, seem to have been the cases where it was allowed; and even of those, not for insidiatio varium, depopulatio agrorum, or combustio domorum. The statute de Clero, 25. E. 3. st. 3. c. 4. settled the law on this head. 2. As to the persons, it extended to all clerks, always, and toties quoties. 2. H. P. C. 374. To nuns also. Fitz. Abr. Corone. 461. 22. E. 3. The clerical habit and tonsure were considered as evidence of the person being clerical. 26. Assiz. 19. 20. E. 2. Fitz. Corone. 233. By the 9. E. 4. 28. b. 34. H. 6. 49 a. b. simple reading became the evidence. This extended impunity to a great number of laymen, and toties quoties. The stat. 4. H. 7. c. 13. directed that real clerks should, upon a second arraignment, produce their orders, and all others to be burnt in the hand with M. or T. on the first allowance of clergy, and not to be admitted to it a second time. A heretic, Jew, or Turk (as being incapable of orders) could not have clergy. 11. Co. Rep. 29 b. But a Greek, or other alien, reading in a book of his own country, might. Bro. Clergie. 20. So a blind man, if he could speak Latin. Ib. 21. qu. 11. Rep. 29. b. The orders entitling the party, were bishops, priests, deacons and subdeacons, the inferior being reckoned Clerici in minoribus. 2. H. P. C. 373. Quære, however, if this distinction is not founded on the stat. 23. H. 8. c. 1. 25. H. 8. c. 32? By merely dropping all the statutes, it should seem that none but clerks would be entitled to this privilege, and that they would, toties quoties.

it shall be disposed of as if no such saving had been.

The aid of Counsel,[1] and examination of their witnesses on oath, shall be allowed to defendants in criminal prosecutions.

Slaves guilty of any offence[2] punishable in others by labor in the public works, shall be transported to such parts in the West Indies, South America, or Africa, as the Governor shall direct, there to be continued in slavery.

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## [Note F.]

### *Notes on the Establishment of a Money Unit, and of a Coinage for the United States.*

In fixing the Unit of Money, these circumstances are of principal importance.

I. That it be of *convenient size* to be applied as a measure to the common money transactions of life.

II. That its parts and multiples be in *an easy proportion* to each other, so as to facilitate the money arithmetic.

III. That the Unit and its parts, or divisions, be *so nearly of the value of some of the known coins*, as that they may be of easy adoption for the people.

The Spanish Dollar seems to fulfil all these conditions.

[1] 1. Ann. c. 9.

[2] Manslaughter, counterfeiting, arson, asportation of vessels, robbery, burglary, house-breaking, horse-stealing, larceny.

I. Taking into our view all money transactions, great and small, I question if a common measure of more *convenient size* than the Dollar could be proposed. The value of 100, 1000, 10,000 dollars is well estimated by the mind; so is that of the tenth or the hundredth of a dollar. Few transactions are above or below these limits. The expediency of attending to the size of the money Unit will be evident, to any one who will consider how inconvenient it would be to a manufacturer or merchant, if, instead of the yard for measuring cloth, either the inch or the mile had been made the Unit of Measure.

II. The most *easy ratio* of multiplication and division, is that by ten. Every one knows the facility of Decimal Arithmetic. Every one remembers, that, when learning Money-Arithmetic, he used to be puzzled with adding the farthings, taking out the fours and carrying them on; adding the pence, taking out the twelves and carrying them on; adding the shillings, taking out the twenties and carrying them on; but when he came to the pounds, where he had only tens to carry forward, it was easy and free from error. The bulk of mankind are schoolboys through life. These little perplexities are always great to them. And even mathematical heads feel the relief of an easier, substituted for a more difficult process. Foreigners, too, who trade and travel among us, will find a great facility in understanding our coins and accounts from this

ratio of subdivision. Those who have had occasion to convert the livres, sols, and deniers of the French; the gilders, stivers, and frenings of the Dutch; the pounds, shillings, pence, and farthings of these several States, into each other, can judge how much they would have been aided, had their several subdivisions been in a decimal ratio. Certainly, in all cases, where we are free to choose between easy and difficult modes of operation, it is most rational to choose the easy. The Financier, therefore, in his report, well proposes that our Coins should be in decimal proportions to one another. If we adopt the Dollar for our Unit, we should strike four coins, one of gold, two of silver, and one of copper, viz:

1. A golden piece, equal in value to ten dollars:
2. The Unit or Dollar itself, of silver:
3. The tenth of a Dollar, of silver also:
4. The hundredth of a Dollar, of copper.

Compare the arithmetical operations, on the same sum of money expressed in this form, and expressed in the pound sterling and its division.

| | £ | s. | d. | qrs. | Dollars. |
|---|---|---|---|---|---|
| Addition. | 8 | 13 | 11 | 1-2 | = 38.65 |
| | 4 | 12 | 8 | 3-4 | = 20.61 |
| | 13 | 6 | 8 | 1-4 | = 59.26 |

| | £ | s. | d. | qrs. | Dollars. |
|---|---|---|---|---|---|
| Subtraction. | 8 | 13 | 11 | 1-2 | = 38.65 |
| | 4 | 12 | 8 | 3-4 | = 20.61 |
| | 4 | 1 | 2 | 3-4 | = 18.04 |

Multiplication by 8.

| £ | s. | d. | qrs. | Dollars. |
|---|---|---|---|---|
| 8 | 13 | 11 | 1-2 | = 38.65 |
| 20 | | | | 8 |
| 173 | | | | $309.20 |
| 12 | | | | |
| 2087 | | | | |

Division by 8.

| £ | s. | d. | qrs. | Dollars. |
|---|---|---|---|---|
| 8 | 13 | 11 | 1-2 | = 8) 38.65 |
| 20 | | | | 4.83 |
| 173 | | | | |
| 12 | | | | |
| 2087 | | | | |

| | |
|---|---|
| 4 | 4 |
| 8350 | 8)8350 |
| 8 | 4)1043 |
| 4)66.800 | 12) 260 3-4 |
| 12)16700 | 20) 21 8 3-4 |
| 20)1391 8 | £1 1 8 3-4 |
| £69 11 8 | |

A bare inspection of the above operations will evince the labor which is occasioned by subdividing the Unit into 20ths, 240ths, and 960ths, as the English do, and as we have done; and the ease of subdivision in a decimal ratio. The same difference arises in making payment. An Englishman, to pay £8, 13*s*. 11*d*. 1-2 qrs., must find, by calculation, what combination of the coins of his country will pay this sum; but an American, having the same sum to pay, thus expressed $38.65, will know, by inspection only, that three golden pieces, eight units or dollars, six tenths, and five coppers, pay it precisely.

III. The third condition required is, that the Unit, its multiples, and subdivisions, coincide in value with some of the known coins so nearly, that the people may, by a quick reference in the mind, estimate their value. If this be not attended to, they will be very long in adopting the innovation, if ever they adopt it. Let us examine, in this point of view, each of the four coins proposed.

1. The golden piece will be 1-5 more than a half joe, and 1-15 more than a double guinea. It will be readily estimated, then, by reference to either of them; but more readily and accurately as equal to ten dollars.

2. The Unit, or Dollar, is a known coin, and the most familiar of all, to the minds of the people. It is already adopted from South to North; has identified our currency, and therefore happily offers itself as a Unit already introduced. Our public debt, our requisitions, and their appointments, have given it actual and long possession of the place of Unit. The course of our commerce, too, will bring us more of this than of any other foreign coin, and therefore renders it more worthy of attention. I know of no Unit which can be proposed in competition with the Dollar, but the Pound. But what is the Pound? 1547 grains of fine silver in Georgia; 1289 grains in Virginia, Connecticut, Rhode Island, Massachusetts, and New Hampshire; 1031 1-4 grains in Maryland, Delaware, Pennsylvania, and New Jersey; 966 3-4 grains in North Carolina and New York. Which of these shall we adopt? To which State give that pre-eminence of which all are so jealous? And on which impose the difficulties of a new estimate of their corn, their cattle, and other commodities? Or shall we hang the pound sterling, as a common badge, about all their necks? This contains 1718 3-4 grains of pure silver. It is difficult to familiarize a new coin to the people; it is more difficult to familiarize them to a new coin with an old name. Happily, the dollar is familiar to them all, and is already as much referred to for a measure of value, as their respective provincial pounds.

3. The tenth will be precisely the Spanish bit, or

half pistareen. This is a coin perfectly familiar to us all. When we shall make a new coin, then, equal in value to this, it will be of ready estimate with the people.

4. The hundredth, or copper, will differ little from the copper of the four Eastern States, which is 1-108 of a dollar; still less from the penny of New York and North Carolina, which is 1-96 of a dollar; and somewhat more from the penny or copper of Jersey, Pennsylvania, Delaware, and Maryland, which is 1-90 of a dollar. It will be about the medium between the old and the new coppers of these States, and will therefore soon be substituted for them both. In Virginia, coppers have never been in use. It will be as easy, therefore, to introduce them there of one value as of another. The copper coin proposed will be nearly equal to three-fourths of their penny, which is the same with the penny lawful of the Eastern States.

A great deal of small change is useful in a State, and tends to reduce the price of small articles. Perhaps it would not be amiss to coin three more pieces of silver, one of the value of five-tenths, or half a dollar, one of the value of two-tenths, which would be equal to the Spanish pistareen, and one of the value of five coppers, which would be equal to the Spanish half-bit. We should then have five silver coins, viz.:

1. The Unit or Dollar:
2. The half-dollar or five-tenths:

3. The double tenth, equal to 2, or one-fifth of a dollar, or to the pistareen:

4. The tenth, equal to a Spanish bit:

5. The five copper piece, equal to .5, or one-twentieth of a dollar, or the half-bit.

The plan reported by the Financier is worthy of his sound judgment. It admits, however, of objection, in the size of the Unit. He proposes that this shall be the 1440th part of a dollar: so that it will require 1440 of his units to make the one before proposed. He was led to adopt this by a mathematical attention to our old currencies, all of which this Unit will measure without leaving a fraction. But as our object is to get rid of those currencies, the advantage derived from this coincidence will soon be past, whereas the inconveniences of this Unit will forever remain, if they do not altogether prevent its introduciton. It is defective in two of the three requisites of a Money Unit. 1. It is inconvenient in its application to the ordinary money transactions. 10,000 dollars will require eight figures to express them, to wit, 14,400,000 units. A horse or bullock of eighty dollars value, will require a notation of six figures, to wit, 115,200 units. As a money of account, this will be laborious, even when facilitated by the aid of decimal arithmetic: as a common measure of the value of property, it will be too minute to be comprehended by the people. The French are subjected to very laborious calculations, the Livre being their ordinary money

of account, and this but between 1-5th and 1-6th of a dollar; but what will be our labors, should our money of account be 1-1440th of a dollar? 2. It is neither equal, nor near to any of the known coins in value.

If we determine that a Dollar shall be our Unit, we must then say with precision what a Dollar is. This coin, struck at different times, of different weights and fineness, is of different values. Sir Isaac Newton's assay and representation to the Lords of the Treasury, in 1717, of those which he examined, make their values as follows:

| | dwts. | grs. | | | | |
|---|---|---|---|---|---|---|
| The Seville piece of eight ... | 17— | 12 | containing | 387 | grains of pure sil- | |
| The Mexico piece of eight ... | 17— | 10 5-9 | " | 385 | 1-2 | [ver. |
| The Pillar piece of eight .... | 17— | 9 | " | 385 | 3-4 | |
| The new Seville piece of eight | 14— | | " | 308 | 7-10 | |

The Financier states the old Dollar as containing 376 grains of fine silver, and the new 365 grains. If the Dollars circulating among us be of every date equally, we should examine the quantity of pure metal in each, and from them form an average for our Unit. This is a work proper to be committed to mathematicians as well as merchants, and which should be decided on actual and accurate experiment.

The quantum of alloy is also to be decided. Some is necessary, to prevent the coin from wearing too fast; too much, fills our pockets with copper, instead of silver. The silver coin assayed by Sir Isaac Newton, varied from 1 1-2 to 76 pennyweights alloy, in

the pound troy of mixed metal. The British standard has 18 dwt.; the Spanish coins assayed by Sir Isaac Newton, have from 18 to 19 1-2 dwt.; the new French crown has in fact 19 1-2, though by edict, it should have 20 dwt., that is 1-12.

The taste of our countrymen will require, that their furniture plate should be as good as the British standard. Taste cannot be controlled by law. Let it then give the law, in a point which is indifferent to a certain degree. Let the Legislature fix the alloy of furniture plate at 18 dwt., the British standard, and Congress that of their coin at one ounce in the pound, the French standard. This proportion has been found convenient for the alloy of gold coin, and it will simplify the system of our mint to alloy both metals in the same degree. The coin, too, being the least pure, will be the less easily melted into plate. These reasons are light, indeed, and, of course, will only weigh, if no heavier ones can be opposed to them.

The proportion between the values of gold and silver is a mercantile problem altogether. It would be inaccurate to fix it by the popular exchanges of a half Joe for eight dollars, a Louis for four French crowns, or five Louis for twenty-three dollars. The first of these, would be to adopt the Spanish proportion between gold and silver; the second, the French; the third, a mere popular barter, wherein convenience is consulted more than accuracy. The legal proportion in Spain is 16 for 1; in England 15 1-2 for

1; in France, 15 for 1. The Spaniards and English are found, in experience, to retain an over-proportion of gold coins, and to lose their silver. The French have a greater proportion of silver. The difference at market has been on the decrease. The Financier states it at present, as at 14 1-2 for one. Just principles will lead us to disregard legal proportions altogether; to enquire into the market price of gold, in the several countries with which we shall principally be connected in commerce, and to take an average from them. Perhaps we might, with safety, lean to a proportion somewhat above par for gold, considering our neighborhood, and commerce with the sources of the coins, and the tendency which the high price of gold in Spain has, to draw thither all that of their mines, leaving silver principally for our and other markets. It is not impossible that 15 for 1, may be found an eligible proportion. I state it, however, as a conjecture only.

As to the alloy for gold coin, the British is an ounce in the pound; the French, Spanish, and Portuguese differ from that, only from a quarter of a grain, to a grain and a half. I should, therefore, prefer the British, merely because its fraction stands in a more simple form, and facilitates the calculations into which it enters.

Should the Unit be fixed at 365 grains of pure silver, gold at 15 for 1, and the alloy of both be one-twelfth, the weight of the coins will be as follows:

| | Grains. | Grains. | dwt. Grains. |
|---|---|---|---|
| The Golden piece containing | 242 1-3 of pure metal, | 22.12 of alloy, will weigh | 11--1.45 |
| The Unit or Dollar | 365 | 33.18 | 16—14.18 |
| The half dollar, or five tenths, | 182 1-2 | 16.59 | 8—7.09 |
| The fifth, or Pistareen, | 73 | 6.63 | 3—7.63 |
| The tenth, or Bit, | 36 1-2 | 3 318 | 1—15.818 |
| The twentieth, or half Bit, | 18 1-4 | 1.659 | 19.9 |

The quantity of fine silver which shall constitute the Unit, being settled, and the proportion of the value of gold to that of silver; a table should be formed from the assay before suggested, classing the several foreign coins according to their fineness, declaring the worth of a pennyweight or grain in each class, and that they shall be lawful tenders at those rates, if not clipped or otherwise diminished; and, where diminished, offering their value for them at the mint, deducting the expense of re-coinage. Here the Legislatures should co-operate with Congress, in providing that no money be received or paid at their treasuries, or by any of their officers, or any bank, but on actual weight; in making it criminal, in a high degree, to diminish their own coins, and, in some smaller degree, to offer them in payment when diminished.

That this subject may be properly prepared, and in readiness for Congress to take up at their meeting in November, something must now be done. The present session drawing to a close, they probably would not choose to enter far into this undertaking themselves. The Committee of the States, however, during the recess, will have time to digest it thoroughly, if Congress will fix some general

principles for their government. Suppose they be instructed,

To appoint proper persons to assay and examine, with the utmost accuracy practicable, the Spanish milled dollars of different dates, in circulation with us.

To assay and examine, in like manner, the fineness of all the other coins which may be found in circulation within these States.

To report to the Committee the result of these assays, by them to be laid before Congress.

To appoint, also, proper persons to enquire what are the proportions between the values of fine gold, and fine silver, at the markets of the several countries with which we are, or probably may be, connected in commerce; and what would be a proper proportion here, having regard to the average of their values at those markets, and to other circumstances, and to report the same to the Committee, by them to be laid before Congress.

To prepare an Ordinance for establishing the Unit of Money within these States; for subdividing it; and for striking coins of gold, silver, and copper, on the following principles:

That the Money Unit of these States shall be equal in value to a Spanish milled dollar containing so much fine silver as the assay, before directed, shall show to be contained, on an average, in dollars of the several dates in circulation with us.

That this Unit shall be divided into tenths and hundredths; that there shall be a coin of silver of the

value of a Unit; one other of the same metal, of the value of one-tenth of a Unit; one other of copper, of the value of the hundredth of a Unit.

That there shall be a coin of gold of the value of ten Units, according to the report before directed, and the judgment of the Committee thereon.

That the alloy of the said coins of gold and silver, shall be equal in weight to one-eleventh part of the fine metal.

That there be proper devices for these coins.

That measures be proposed for preventing their diminution, and also their currency, and that of any others, when diminished.

That the several foreign coins be described and classed in the said Ordinance, the fineness of each class stated, and its value by weight estimated in Units and decimal parts of Units.

And that the said draught of an Ordinance be reported to Congress at their next meeting, for their consideration and determination.

*Supplementary Explanations.*

The preceding notes having been submitted to the consideration of the Financier, he favored me with his opinion and observations on them, which render necessary the following supplementary explanations.

I observed, in the preceding notes, that the true proportion of value between gold and silver was a mercantile problem altogether, and that, perhaps, fifteen for one, might be found an eligible proportion.

The Financier is so good as to inform me, that this would be higher than the market would justify. Confident of his better information on this subject, I recede from that idea.[1]

He also informs me, that the several coins, in circulation among us, have been already assayed with accuracy, and the result published in a work on that subject. The assay of Sir Isaac Newton had superseded, in my mind, the necessity of this operation as to the older coins, which were the subject of his examination. This later work, with equal reason, may be considered as saving the same trouble as to the latter coins.

So far, then, I accede to the opinions of the Financier. On the other hand, he seems to concur with me, in thinking his smallest fractional division too minute for a Unit, and, therefore, proposes to transfer that denomination to his largest silver coin, containing 1000 of the units first proposed, and worth about 4*s*. 2*d*. lawful, or 25-36 of a Dollar. The only question then remaining between us is, whether the Dollar, or this coin, be best for the Unit. We both agree that *the ease of adoption with the people*, is the thing to be aimed at.

[1] In a newspaper, which frequently gives good details in political economy, I find, under the Hamburgh head, that the present market price of Gold and Silver is, in England, 15.5 for 1: in Russia, 15: in Holland, 14.75: in Savoy, 14.6: in France, 14.42: in Spain, 14.3: in Germany, 14.155: the average of which is 14.675 or 14 5-8. I would still incline to give a little more than the market price for gold, because of its superior convenience in transportation.

1. As to the Dollar, events have overtaken and superseded the question. It is no longer a doubt whether the people can adopt it with ease; they have adopted it, and will have to be turned out of that, into another tract of calculation, if another Unit be assumed. They have now two Units, which they use with equal facility, viz., the Pound of their respective State, and the Dollar. The first of these is peculiar to each State: the second, happily, common to all. In each State, the people have an easy rule of converting the pound of their State into dollars, or dollars into pounds; and this is enough for them, without knowing how this may be done in every State of the Union. Such of them as live near enough the borders of their State to have dealings with their neighbors, learn also the rule of their neighbors: thus, in Virginia and the Eastern States, where the dollar is 6*s*. or 3-10 of a pound, to turn pounds into dollars, they multiply by 10 and divide by 3. To turn dollars into pounds, they multiply by 3, and divide by 10. Those in Virginia who live near to Carolina, where the dollar is 8*s*. or 4-10 of a pound, learn the operation of that State, which is a multiplication by 4, and division by 10, *et e converso*. Those who live near Maryland, where the dollar is 7*s*. 6*d*. or 3-8 of a pound, multiply by 3, and divide by 8, *et e converso*. All these operations are easy, and have been found, by experience, not too much for the arithmetic of the people, when they have occasion to convert their old Unit into dollars, or the reverse.

2. As to the Unit of the Financier; in the States where the dollar is 3-10 of a pound, this Unit will be 5-24. Its conversion into the pound then, will be by a multiplication of 5, and a division by 24. In the States where the dollar is 3-8 of a pound, this Unit will be 25-96 of a pound, and the operation must be to multiply by 25, and divide by 96, *et e converso*. Where the dollar is 4-10 of a pound, this Unit will be 5-18. The simplicity of the fraction, and of course the facility of conversion and reconversion, is therefore against this Unit, and in favor of the dollar, in every instance. The only advantage it has over the dollar, is that it will in every case express our farthing without a remainder; whereas, though the dollar and its decimals will do this in many cases, it will not in all. But, even in these, by extending your notation one figure further, to wit, to thousands, you approximate to perfect accuracy within less than the two-thousandth part of a dollar; an atom in money which every one would neglect. Against this single inconvenience, the other advantages of the dollar are more than sufficient to preponderate. This Unit will present to the people a new coin, and whether they endeavor to estimate its value by comparing it with a Pound, or with a Dollar, the Units they now possess, they will find the fraction very compound, and of course less accommodated to their comprehension and habits than the dollar. Indeed the probability is, that they could never be led to compute in it generally.

The Financier supposes that the 1-100 part of a dollar is not sufficiently small, where the poor are purchasers or vendors. If it is not, make a smaller coin. But I suspect that it is small enough. Let us examine facts, in countries where we are acquainted with them. In Virginia, where our towns are few, small, and of course their demand for necessaries very limited, we have never yet been able to introduce a copper coin at all. The smallest coin which anybody will receive there, is the half-bit, or 1-20 of a dollar. In those States where the towns are larger and more populous, a more habitual barter of small wants, has called for a copper coin of 1-90, 1-96, or 1-108 of a dollar. In England, where the towns are many and populous, and where ages of experience have matured the conveniences of intercourse, they have found that some wants may be supplied for a farthing, or 1-208 of a dollar, and they have accommodated a coin to this want. This business is evidently progressive. In Virginia, we are far behind. In some other States, they are further advanced, to wit, to the appreciation of 1-90, 1-96, 1-108 of a dollar. To this most advanced state, then, I accommodated my smallest coin in the decimal arrangement, as *a money of payment*, corresponding with the *money of account*. I have no doubt the time will come when a smaller coin will be called for. When that comes, let it be made. It will probably be the half of the copper I suppose, that is to say, 5-1000 or .005 of a dollar, this being

very nearly the farthing of England. But it will be time enough to make it, when the people shall be ready to receive it.

My proposition then, is, that our notation of money shall be decimal, descending *ad libitum* of the person noting; that the Unit of this notation shall be a Dollar; that coins shall be accommodated to it from ten dollars to the hundredth of a dollar; and that, to set this on foot, the resolutions be adopted which were proposed in the notes, only substituting *an enquiry into the fineness of the coins* in lieu of *an assay of them.*

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[Note G.]

I have sometimes asked myself, whether my country is the better for my having lived at all? I do not know that it is. I have been the instrument of doing the following things; but they would have been done by others; some of them, perhaps, a little better.

The Rivanna had never been used for navigation; scarcely an empty canoe had ever passed down it. Soon after I came of age, I examined its obstructions, set on foot a subscription for removing them, got an Act of Assembly passed, and the thing effected, so as to be used completely and fully for carrying down all our produce.

The Declaration of Independence.

I proposed the demolition of the church establishment, and the freedom of religion. It could only

be done by degrees; to wit, the Act of 1776, c. 2. exempted dissenters from contributions to the Church, and left the Church clergy to be supported by voluntary contributions of their own sect; was continued from year to year, and made perpetual 1779, c. 36. I prepared the act for religious freedom in 1777, as part of the revisal, which was not reported to the Assembly till 1779, and that particular law not passed till 1785, and then by the efforts of Mr. Madison.

The act putting an end to entails.

The act prohibiting the importation of slaves.

The act concerning citizens, and establishing the natural right of man to expatriate himself, at will.

The act changing the course of descents, and giving the inheritance to all the children, &c., equally, I drew as part of the revisal.

The act for apportioning crimes and punishments, part of the same work, I drew. When proposed to the legislature, by Mr. Madison, in 1785, it failed by a single vote. G. K. Taylor afterwards, in 1796, proposed the same subject; avoiding the adoption of any part of the diction of mine, the text of which had been studiously drawn in the technical terms of the law, so as to give no occasion for new questions by new expressions. When I drew mine, public labor was thought the best punishment to be substituted for death. But, while I was in France, I heard of a society in England, who had successfully introduced solitary confinement, and saw the draw-

ing of a prison at Lyons, in France, formed on the idea of solitary confinement. And, being applied to by the Governor of Virginia for the plan of a Capitol and Prison, I sent him the Lyons plan, accompanying it with a drawing on a smaller scale, better adapted to our use. This was in June, 1786. Mr. Taylor very judiciously adopted this idea, (which had now been acted on in Philadelphia, probably from the English model) and substituted labor in confinement, to the public labor proposed by the Committee of revisal; which themselves would have done, had they been to act on the subject again. The public mind was ripe for this in 1796, when Mr. Taylor proposed it, and ripened chiefly by the experiment in Philadelphia; whereas, in 1785, when it had been proposed to our Assembly, they were not quite ripe for it.

In 1789 and 1790, I had a great number of olive plants, of the best kind, sent from Marseilles to Charleston, for South Carolina and Georgia. They were planted, and are flourishing; and, though not yet multiplied, they will be the germ of that cultivation in those States.

In 1790, I got a cask of heavy upland rice, from the river Denbigh, in Africa, about lat. 9° 30′ North, which I sent to Charleston, in hopes it might supersede the culture of the wet rice, which renders South Carolina and Georgia so pestilential through the summer. It was divided, and a part sent to Georgia. I know not whether it has been attended to in South

Carolina; but it has spread in the upper parts of Georgia, so as to have become almost general, and is highly prized. Perhaps it may answer in Tennessee and Kentucky. The greatest service which can be rendered any country is, to add an useful plant to its culture; especially, a bread grain; next in value to bread is oil.

Whether the act for the more general diffusion of knowledge will ever be carried into complete effect, I know not. It was received by the legislature with great enthusiasm at first; and a small effort was made in 1796, by the act to establish public schools, to carry a part of it into effect, viz., that for the establishment of free English schools; but the option given to the courts has defeated the intention of the act.[1]

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[Note H.]

New York, October 13, 1789.

Sir,

In the selection of characters to fill the important offices of Government, in the United States, I was naturally led to contemplate the talents and dispositions which I knew you to possess and entertain for the service of your country; and without being

[1 It appears, from a blank space at the bottom of this paper, that a continuation had been intended. Indeed, from the loose manner in which the above notes are written, it may be inferred, that they were originally intended as memoranda only, to be used in some more permanent form.]

able to consult your inclination, or to derive any knowledge of your intention from your letters, either to myself or to any other of your friends, I was determined, as well by motives of private regard, as a conviction of public propriety, to nominate you for the Department of State, which, under its present organization, involves many of the most interesting objects of the Executive authority. But grateful as your acceptance of this commission would be to me, I am, at the same time, desirous to accommodate your wishes, and I have, therefore, forborne to nominate your successor at the court of Versailles, until I should be informed of your determination.

Being on the eve of a journey through the Eastern States, with a view to observe the situation of the country, and in a hope of perfectly re-establishing my health, which a series of indispositions has much impaired, I have deemed it proper to make this communication of your appointment, in order that you might lose no time, should it be your *wish* to visit Virginia during the recess of Congress, which will probably be the most convenient season, both as it may respect your private concerns and the public service.

Unwilling, as I am, to interfere in the direction of your choice of assistants, I shall only take the liberty of observing to you, that from warm recommendations which I have received in behalf of Roger Alden, Esq., assistant Secretary to the late Congress, I have placed all the papers thereunto belonging,

under his care. Those papers which more properly appertain to the office of Foreign Affairs, are under the superintendence of Mr. Jay, who has been so obliging as to continue his good offices, and they are in the immediate charge of Mr. Remsen.

With sentiments of very great esteem and regard,
I have the honor to be, sir,
Your most obedient servant,

GEORGE WASHINGTON.

The Honorable Thomas Jefferson.

I take this occasion to acknowledge the receipt of your several favors, of the 4th and 5th of December of the last, and 10th of May of the present year, and to thank you for the communications therein.

G. W.

NEW YORK, November 30, 1789.

DEAR SIR,

You will perceive by the enclosed letter, (which was left for you at the office of Foreign Affairs, when I made a journey to the Eastern States,) the motives on which I acted with regard to yourself, and the occasion of my explaining them at that early period.

Having now reason to hope, from Mr. Trumbull's report, that you will be arrived at Norfolk before this time, (on which event I would most cordially congratulate you,) and having a safe conveyance by Mr. Griffin, I forward your commission to Virginia; with a request to be made acquainted with your

sentiments as soon as you shall find it convenient to communicate them to me.

With sentiments of very great esteem and regard,

I am, dear sir,

Your most obedient humble servant,

GEORGE WASHINGTON.

The Honorable Thomas Jefferson.

# Jefferson's Tombstone Suggestions

Fac-simile of Jefferson's Suggestions for Epitaph and Design of his own Tombstone. Photo-engraving from the Original Document found among the papers of Jefferson after his death

## Jefferson's Tombstone Suggestions

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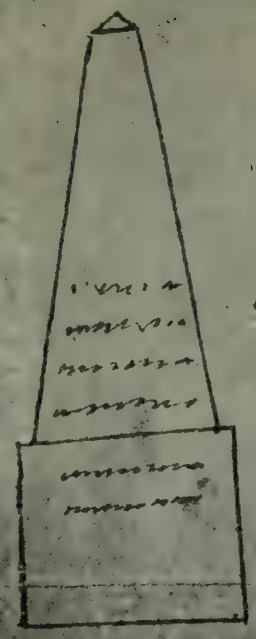

could the dead feel any interest in Monu-
-ments or other remembrances of them, when, as
Anacreon says Ολιγη δε κεισομεσθα
Κονις, οστεων λυθεντων
the following would be to my Manes the most
gratifying.

On the grave
a plain die or cube of 3.f without any
mouldings, surmounted by an Obelisk
of 6.f. height, each of a single stone:
on the faces of the Obelisk the following
inscription, & not a word more.

'Here was buried
Thomas Jefferson
Author of the Declaration of American Independance
of the Statute of Virginia for religious freedom
& Father of the University of Virginia'

because by these, as testimonials that I have lived, I ish most to
be remembered. [illegible] to be of the coarse stone of which
my columns are made, that no one might be tempted
hereafter to destroy it for the value of the materials.
my bust by Ciracchi, with the pedestal and truncated
column on which it stands, might be given to the University
if they would place it in the Dome room of the Rotunda.
on the Die of the Obelisk might be engraved

Born Apr. 2. 1743. O.S.
Died ——

# THE ANAS.

# INTRODUCTORY NOTE.

The "three volumes bound in marbled paper," to which the introductory "Explanation" refers, contain the celebrated "Anas," up to the time of Jefferson's retirement from the Secretaryship of State on January 1st, 1794. Some of his friends have regretted that they were ever published. However that may be, they have been published, and it was manifestly the purpose of Mr. Jefferson that they should be. Late in life, "when the passions of the times had passed away," he carefully revised them for publication.

"At this day," he says, "after the lapse of twenty-five years, or more, from their dates, I have given to the whole a calm revisal, when the passions of the times are passed away, and the reasons of the transactions act alone upon the judgment. Some of the informations I had recorded, are now cut out from the rest, because I have seen that they were incorrect, or doubtful, or merely personal or private, with which we have nothing to do. I should, perhaps, not have thought the rest worth preserving, but for their testimony against the only history of that period, which pretends to have been compiled from authentic and unpublished documents." Considering these circumstances, these three volumes of the "Anas" ought not to be excluded from a publication professing to be a complete edition of the Writings of Thomas Jefferson. They are accordingly inserted in the form in which he left them after his last revisal.

The supplementary portion of the "Anas," omitted from the Congressional Edition published in 1853, extends from 1797 to 1808, covering many interesting events of Jefferson's first and second Administrations, while President of the United States.

# THE ANAS.

## EXPLANATION OF THE THREE VOLUMES BOUND IN MARBLED PAPER.

In these three volumes will be found copies of the official opinions[1] given in writing by me to General Washington, while I was Secretary of State, with sometimes the documents belonging to the case. Some of these are the rough draughts, some press copies, some fair ones. In the earlier part of my acting in that office, I took no other note of the passing transactions; but after awhile, I saw the importance of doing it in aid of my memory. Very often, therefore, I made memorandums on loose scraps of paper, taken out of my pocket in the moment, and laid by to be copied fair at leisure, which, however, they hardly ever were. These scraps, therefore, ragged, rubbed, and scribbled as they were, I had bound with the others by a binder who came into my cabinet, did it under my own eye, and without the opportunity of reading a single paper. At this day, after the lapse of twenty-five

[1] The opinions here alluded to will be found in the Official Papers of Jefferson.

years, or more, from their dates, I have given to the whole a calm revisal, when the passions of the time are passed away, and the reasons of the transactions act alone on the judgment. Some of the informations I had recorded, are now cut out from the rest, because I have seen that they were incorrect, or doubtful, or merely personal or private, with which we have nothing to do. I should perhaps have thought the rest not worth preserving, but for their testimony against the only history of that period, which pretends to have been compiled from authentic and unpublished documents.

* * * * * * * *

But a short review of facts * * * will show, that the contests of that day were contests of principle, between the advocates of republican, and those of kingly government, and that had not the former made the efforts they did, our government would have been, even at this early day, a very different thing from what the successful issue of those efforts have made it.

The alliance between the States under the old Articles of Confederation, for the purpose of joint defence against the aggression of Great Britain, was found insufficient, as treaties of alliance generally are, to enforce compliance with their mutual stipulations; and these, once fulfilled, that bond was to expire of itself, and each State to become sovereign and independent in all things. Yet it could not but occur to every one, that these separate independ-

encies, like the petty States of Greece, would be eternally at war with each other, and would become at length the mere partisans and satellites of the leading powers of Europe. All then must have looked forward to some further bond of union, which would insure eternal peace, and a political system of our own, independent of that of Europe. Whether all should be consolidated into a single government, or each remain independent as to internal matters, and the whole form a single nation as to what was foreign only, and whether that national government should be a monarchy or republic, would of course divide opinions, according to the constitutions, the habits, and the circumstances of each individual. Some officers of the army, as it has always been said and believed, (and Steuben and Knox have ever been named as the leading agents,) trained to monarchy by military habits, are understood to have proposed to General Washington to decide this great question by the army before its disbandment, and to assume himself the crown on the assurance of their support. The indignation with which he is said to have scouted this parricide proposition was equally worthy of his virtue and wisdom.

The next effort was, (on suggestion of the same individuals, in the moment of their separation,) the establishment of an hereditary order under the name of the Cincinnati, ready prepared by that distinction to be ingrafted into the future frame of government, and placing General Washington still at their head,

The General wrote to me on this subject, while I was in Congress at Annapolis, and an extract from my letter is inserted in 5th Marshall's history, page 28. He afterwards called on me at that place on his way to a meeting of the society, and after a whole evening of consultation, he left that place fully determined to use all his endeavors for its total suppression. But he found it so firmly riveted in the affections of the members, that, strengthened as they happened to be by an adventitious occurrence of the moment, he could effect no more than the abolition of its hereditary principle. He called again on his return, and explained to me fully the opposition which had been made, the effect of the occurrence from France, and the difficulty with which its duration had been limited to the lives of the present members. Further details will be found among my papers, in his and my letters, and some in the *Encyclopédie Méthodique et Dictionnaire d'Economie Politique*, communicated by myself to M. Meusnier, its author, who had made the establishment of this society the ground, in that work, of a libel on our country.

The want of some authority which should procure justice to the public creditors, and an observance of treaties with foreign nations, produced, some time after, the call of a convention of the States at Annapolis. Although, at this meeting, a difference of opinion was evident on the question of a republican or kingly government, yet, so general through

the States was the sentiment in favor of the former, that the friends of the latter confined themselves to a course of obstruction only, and delay, to everything proposed; they hoped, that nothing being done, and all things going from bad to worse, a kingly government might be usurped, and submitted to by the people, as better than anarchy and wars internal and external, the certain consequences of the present want of a general government. The effect of their manœuvres, with the defective attendance of Deputies from the States, resulted in the measure of calling a more general convention, to be held at Philadelphia. At this, the same party exhibited the same practices, and with the same views of preventing a government of concord, which they foresaw would be republican, and of forcing through anarchy their way to monarchy. But the mass of that convention was too honest, too wise, and too steady, to be baffled and misled by their manœuvres.

One of these was a form of government proposed by Colonel Hamilton, which would have been in fact a compromise between the two parties of royalism and republicanism. According to this, the executive and one branch of the legislature were to be during good behavior, *i. e.* for life, and the governors of the States were to be named by these two permanent organs. This, however, was rejected; on which Hamilton left the convention, as desperate, and never returned again until near its final conclusion. These opinions and efforts, secret or avowed, of the

advocates for monarchy, had begotten great jealousy through the States generally; and this jealousy it was which excited the strong opposition to the conventional constitution; a jealousy which yielded at last only to a general determination to establish certain amendments as barriers against a government either monarchical or consolidated. In what passed through the whole period of these conventions, I have gone on the information of those who were members of them, being absent myself on my mission to France.

I returned from that mission in the first year of the new government, having landed in Virginia in December, 1789, and proceeded to New York in March, 1790, to enter on the office of Secretary of State. Here, certainly, I found a state of things which, of all I had ever contemplated, I the least expected. I had left France in the first year of her revolution, in the fervor of natural rights, and zeal for reformation. My conscientious devotion to these rights could not be heightened, but it had been aroused and excited by daily exercise. The President received me cordially, and my colleagues and the circle of principal citizens apparently with welcome. The courtesies of dinner parties given me, as a stranger newly arrived among them, placed me at once in their familiar society. But I cannot describe the wonder and mortification with which the table conversations filled me. Politics were the chief topic, and a preference of kingly over republi-

can government was evidently the favorite sentiment. An apostate I could not be, nor yet a hypocrite; and I found myself, for the most part, the only advocate on the republican side of the question, unless among the guests there chanced to be some member of that party from the legislative Houses. Hamilton's financial system had then passed. It had two objects; 1st, as a puzzle, to exclude popular understanding and inquiry; 2d, as a machine for the corruption of the legislature; for he avowed the opinion, that man could be governed by one of two motives only, force or interest; force, he observed, in this country was out of the question, and the interests, therefore, of the members must be laid hold of, to keep the legislative in unison with the executive. And with grief and shame it must be acknowledged that his machine was not without effect; that even in this, the birth of our government, some members were found sordid enough to bend their duty to their interests, and to look after personal rather than public good.

It is well known that during the war the greatest difficulty we encountered was the want of money or means to pay our soldiers who fought, or our farmers, manufacturers and merchants, who furnished the necessary supplies of food and clothing for them. After the expedient of paper money had exhausted itself, certificates of debt were given to the individual creditors, with assurance of payment so soon as the United States should be able. But the distresses of

these people often obliged them to part with these for the half, the fifth, and even a tenth of their value; and speculators had made a trade of cozening them from the holders by the most fraudulent practices, and persuasions that they would never be paid. In the bill for funding and paying these, Hamilton made no difference between the original holders and the fraudulent purchasers of this paper. Great and just repugnance arose at putting these two classes of creditors on the same footing, and great exertions were used to pay the former the full value, and to the latter, the price only which they had paid, with interest. But this would have prevented the game which was to be played, and for which the minds of greedy members were already tutored and prepared. When the trial of strength on these several efforts had indicated the form in which the bill would finally pass, this being known within doors sooner than without, and especially, than to those who were in distant parts of the Union, the base scramble began. Couriers and relay horses by land, and swift sailing pilot boats by sea, were flying in all directions. Active partners and agents were associated and employed in every State, town, and country neighborhood, and this paper was bought up at five shillings, and even as low as two shillings in the pound, before the holder knew that Congress had already provided for its redemption at par. Immense sums were thus filched from the poor and ignorant, and fortunes accumulated by those who had them-

selves been poor enough before. Men thus enriched by the dexterity of a leader, would follow of course the chief who was leading them to fortune, and become the zealous instruments of all his enterprises.

This game was over, and another was on the carpet at the moment of my arrival; and to this I was most ignorantly and innocently made to hold the candle. This fiscal manœuvre is well known by the name of the Assumption. Independently of the debts of Congress, the States had during the war contracted separate and heavy debts; and Massachusetts particularly, in an absurd attempt, absurdly conducted, on the British post of Penobscot: and the more debt Hamilton could rake up, the more plunder for his mercenaries. This money, whether wisely or foolishly spent, was pretended to have been spent for general purposes, and ought, therefore, to be paid from the general purse. But it was objected, that nobody knew what these debts were, what their amount, or what their proofs. No matter; we will guess them to be twenty millions. But of these twenty millions, we do not know how much should be reimbursed to one State, or how much to another. No matter; we will guess. And so another scramble was set on foot among the several States, and some got much, some little, some nothing. But the main object was obtained, the phalanx of the Treasury was reinforced by additional recruits. This measure produced the most bitter and angry contest ever known in Congress,

before or since the Union of the States. I arrived in the midst of it. But a stranger to the ground, a stranger to the actors on it, so long absent as to have lost all familiarity with the subject, and as yet unaware of its object, I took no concern in it.

The great and trying question, however, was lost in the House of Representatives. So high were the feuds excited by this subject, that on its rejection business was suspended. Congress met and adjourned from day to day without doing anything, the parties being too much out of temper to do business together. The eastern members particularly, who, with Smith from South Carolina, were the principal gamblers in these scenes, threatened a secession and dissolution. Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the legislature had been wrought; the disgust of those who were called the creditor States; the danger of the *secession* of their members, and the separation of the States. He observed that the members of the administration ought to act in concert; that though this question was not of my department, yet a common duty should make it a common concern; that the President was the centre on which all administrative questions ultimately rested, and that all of us should rally around him, and support, with joint efforts, measures approved by him; and that the

question having been lost by a small majority only, it was probable that an appeal from me to the judgment and discretion of some of my friends, might effect a change in the vote, and the machine of government, now suspended, might be again set into motion. I told him that I was really a stranger to the whole subject; that not having yet informed myself of the system of finances adopted, I knew not how far this was a necessary sequence; that undoubtedly, if its rejection endangered a dissolution of our Union at this incipient stage, I should deem that the most unfortunate of all consequences, to avert which all partial and temporary evils should be yielded. I proposed to him, however, to dine with me the next day, and I would invite another friend or two, bring them into conference together, and I thought it impossible that reasonable men, consulting together coolly, could fail, by some mutual sacrifices of opinion, to form a compromise which was to save the Union.

The discussion took place. I could take no part in it but an exhortatory one, because I was a stranger to the circumstances which should govern it. But it was finally agreed, that whatever importance had been attached to the rejection of this proposition, the preservation of the Union and of concord among the States was more important, and that therefore it would be better that the vote of rejection should be rescinded, to effect which, some members should change their votes. But it was observed that this

pill would be peculiarly bitter to the southern States, and that some concomitant measure should be adopted, to sweeten it a little to them. There had before been propositions to fix the seat of government either at Philadelphia, or at Georgetown on the Potomac; and it was thought that by giving it to Philadelphia for ten years, and to Georgetown permanently afterwards, this might, as an anodyne, calm in some degree the ferment which might be excited by the other measure alone. So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive,) agreed to change their votes, and Hamilton undertook to carry the other point. In doing this, the influence he had established over the eastern members, with the agency of Robert Morris with those of the middle States, effected his side of the engagement; and so the Assumption was passed, and twenty millions of stock divided among favored States, and thrown in as a pabulum to the stock-jobbing herd. This added to the number of votaries to the Treasury, and made its chief the master of every vote in the legislature, which might give to the government the direction suited to his political views.

I know well, and so must be understood, that nothing like a majority in Congress had yielded to this corruption. Far from it. But a division, not very unequal, had already taken place in the honest part of that body, between the parties styled republican and federal. The latter being monarchists in

principle, adhered to Hamilton of course, as their leader in that principle, and this mercenary phalanx added to them, insured him always a majority in both Houses: so that the whole action of legislature was now under the direction of the Treasury. Still the machine was not complete. The effect of the funding system, and of the Assumption, would be temporary; it would be lost with the loss of the individual members whom it has enriched, and some engine of influence more permanent must be contrived, while these myrmidons were yet in place to carry it through all opposition. This engine was the Bank of the United States. All that history is known, so I shall say nothing about it. While the government remained at Philadelphia, a selection of members of both Houses were constantly kept as directors who, on every question interesting to that institution, or to the views of the federal head, voted at the will of that head; and, together with the stock-holding members, could always make the federal vote that of the majority. By this combination, legislative expositions were given to the constitution, and all the administrative laws were shaped on the model of England, and so passed. And from this influence we were not relieved, until the removal from the precincts of the bank, to Washington.

Here then was the real ground of the opposition which was made to the course of administration. Its object was to preserve the legislature pure and

independent of the executive, to restrain the administration to republican forms and principles, and not permit the constitution to be construed into a monarchy, and to be warped, in practice, into all the principles and pollutions of their favorite English model. Nor was this an opposition to General Washington. He was true to the republican charge confided to him; and has solemnly and repeatedly protested to me, in our conversations, that he would lose the last drop of his blood in support of it; and he did this the oftener and with the more earnestness, because he knew my suspicions of Hamilton's designs against it, and wished to quiet them. For he was not aware of the drift, or of the effect of Hamilton's schemes. Unversed in financial projects and calculations and budgets, his approbation of them was bottomed on his confidence in the man.

But Hamilton was not only a monarchist, but for a monarchy bottomed on corruption. In proof of this, I will relate an anecdote, for the truth of which I attest the God who made me. Before the President set out on his southern tour in April, 1791, he addressed a letter of the fourth of that month, from Mount Vernon, to the Secretaries of State, Treasury and War, desiring that if any serious and important cases should arise during his absence, they would consult and act on them. And he requested that the Vice President should also be consulted. This was the only occasion on which that officer was ever requested to take part in a cabinet question. Some

occasion for consultation arising, I invited those gentlemen (and the Attorney General, as well as I remember,) to dine with me, in order to confer on the subject. After the cloth was removed, and our question agreed and dismissed, conversation began on other matters, and by some circumstance, was led to the British constitution, on which Mr. Adams observed, "purge that constitution of its corruption, and give to its popular branch equality of representation, and it would be the most perfect constitution ever devised by the wit of man." Hamilton paused and said, "purge it of its corruption, and give to its popular branch equality of representation, and it would become an *impracticable* government: as it stands at present, with all its supposed defects, it is the most perfect government which ever existed." And this was assuredly the exact line which separated the political creeds of these two gentlemen. The one was for two hereditary branches and an honest elective one: the other, for an hereditary King, with a House of Lords and Commons corrupted to his will, and standing between him and the people.

Hamilton was, indeed, a singular character. Of acute understanding, disinterested, honest, and honorable in all private transactions, amiable in society, and duly valuing virtue in private life, yet so bewitched and perverted by the British example, as to be under thorough conviction that corruption was essential to the government of a nation. Mr. Adams had originally been a republican. The glare

of royalty and nobility, during his mission to England, had made him believe their fascination a necessary ingredient in government; and Shay's rebellion, not sufficiently understood where he then was, seemed to prove that the absence of want and oppression, was not a sufficient guarantee of order. His book on the American constitutions having made known his political bias, he was taken up by the monarchical federalists in his absence, and on his return to the United States, he was by them made to believe that the general disposition of our citizens was favorable to monarchy. He here wrote his "Davila," as a supplement to a former work, and his election to the Presidency confirmed him in his errors. Innumerable addresses too, artfully and industriously poured in upon him, deceived him into a confidence that he was on the pinnacle of popularity, when the gulf was yawning at his feet, which was to swallow up him and his deceivers. For when General Washington was withdrawn, these *energumeni* of royalism, kept in check hitherto by the dread of his honesty, his firmness, his patriotism, and the authority of his name, now mounted on the car of State and free from control, like Phaeton on that of the sun, drove headlong and wild, looking neither to right nor left, nor regarding anything but the objects they were driving at; until, displaying these fully, the eyes of the nation were opened, and a general disbandment of them from the public councils took place.

Mr. Adams, I am sure, has been long since convinced of the treacheries with which he was surrounded during his administration. He has since thoroughly seen, that his constituents were devoted to republican government, and whether his judgment is re-settled on its ancient basis, or not, he is conformed as a good citizen to the will of the majority, and would now, I am persuaded, maintain its republican structure with the zeal and fidelity belonging to his character. For even an enemy has said, "he is always an honest man, and often a great one." But in the fervor of the fury and follies of those who made him their stalking horse, no man who did not witness it can form an idea of their unbridled madness, and the terrorism with which they surrounded themselves. The horrors of the French revolution, then raging, aided them mainly, and using that as a raw head and bloody bones, they were enabled by their stratagems of X. Y. Z. in which * * * * was a leading mountebank, their tales of tub-plots, ocean massacres, bloody buoys, and pulpit lyings and slanderings, and maniacal ravings of their Gardeners, their Osgoods and parishes, to spread alarm into all but the firmest breasts. Their Attorney General had the impudence to say to a republican member, that deportation must be resorted to, of which, said he, "you republicans have set the example;" thus daring to identify us with the murderous Jacobins of France.

These transactions, now recollected but as dreams

of the night, were then sad realities; and nothing rescued us from their liberticide effect, but the unyielding opposition of those firm spirits who sternly maintained their post in defiance of terror, until their fellow citizens could be aroused to their own danger, and rally and rescue the standard of the constitution. This has been happily done. Federalism and monarchism have languished from that moment, until their treasonable combinations with the enemies of their country during the late war, their plots of dismembering the Union, and their Hartford convention, have consigned them to the tomb of the dead; and I fondly hope, "we may now truly say, we are all republicans, all federalists," and that the motto of the standard to which our country will forever rally, will be, "federal union, and republican government;" and sure I am we may say, that we are indebted for the preservation of this point of ralliance, to that opposition of which so injurious an idea is so artfully insinuated and excited in this history.

Much of this relation is notorious to the world; and many intimate proofs of it will be found in these notes. From the moment where they end, of my retiring from the administration, the federalists[1] got unchecked hold of General Washington. His memory was already sensibly impaired by age, the firm tone of mind for which he had been remarkable, was beginning to relax, its energy was abated, a

[1] See conversation with General Washington, October 1, 1792.

listlessness of labor, a desire for tranquillity had crept on him, and a willingness to let others act, and even think for him. Like the rest of mankind, he was disgusted with atrocities of the French revolution, and was not sufficiently aware of the difference between the rabble who were used as instruments of their perpetration, and the steady and rational character of the American people, in which he had not sufficient confidence. The opposition too of the republicans to the British treaty, and the zealous support of the federalists in that unpopular but favorite measure of theirs, had made him all their own. Understanding, moreover, that I disapproved of that treaty, and copiously nourished with falsehoods by a malignant neighbor of mine, who ambitioned to be his correspondent, he had become alienated from myself personally, as from the republican body generally of his fellow-citizens; and he wrote the letters to Mr. Adams and Mr. Carroll, over which, in devotion to his imperishable fame, we must forever weep as monuments of mortal decay.

February 4th, 1818.

### CONVERSATION WITH ALEXANDER HAMILTON.

August the 13th, 1791. Notes of a conversation between Alexander Hamilton and Thomas Jefferson. Th: Jefferson mentioned to him a letter received from John Adams, disavowing Publicola, and denying that he ever entertained a wish to bring this country under an hereditary executive, or introduce

an hereditary branch of Legislature, &c. See his letter. Alexander Hamilton condemning Mr. Adams' writings, and most particularly "Davila," as having a tendency to weaken the present government, declared in substance as follows: "I own it is my own opinion, though I do not publish it in Dan or Bersheba, that the present government is not that which will answer the ends of society, by giving stability and protection to its rights, and that it will probably be found expedient to go into the British form. However, since we have undertaken the experiment, I am for giving it a fair course, whatever my expectations may be. The success, indeed, so far, is greater than I had expected, and therefore, at present, success seems more possible than it had done heretofore, and there are still other and other stages of improvement which, if the present does not succeed, may be tried, and ought to be tried, before we give up the republican form altogether; for that mind must be really depraved, which would not prefer the equality of political rights, which is the foundation of pure republicanism, if it can be obtained consistently with order. Therefore, whoever by his writings disturbs the present order of things, is really blameable, however pure his intentions may be, and he was sure Mr. Adams' were pure." This is the substance of a declaration made in much more lengthy terms, and which seemed to be more formal than usual for a private conversation between two, and as if intended to qualify some less

guarded expressions which had been dropped on former occasions. Th: Jefferson has committed it to writing in the moment of A. Hamilton's leaving the room.

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December the 25th, 1791, Colonel Gunn (of Georgia) dining the other day with Colonel Hamilton, said to him, with that plain freedom he is known to use, "I wish, Sir, you would advise your friend King, to observe some kind of consistency in his votes. There has been scarcely a question before the Senate on which he has not voted both ways. On the representation bill, for instance, he first voted for the proposition of the Representatives, and ultimately voted against it." "Why," said Colonel Hamilton, "I'll tell you as to that, Colonel Gunn, that it never was intended that bill should pass." Gunn told this to Butler, who told it to Th: Jefferson.

CONVERSATIONS WITH PRESIDENT WASHINGTON.

February the 28th, 1792. I was to have been with him long enough before three o'clock, (which was the hour and day he received visits,) to have opened to him a proposition for doubling the velocity of the post riders, who now travel about fifty miles a day, and might, without difficulty, go one hundred, and for taking measures (by way bills) to know where the delay is, when there is any. I was

delayed by business, so as to have scarcely time to give him the outlines. I ran over them rapidly, and observed afterwards, that I had hitherto never spoken to him on the subject of the post office, not knowing whether it was considered as a revenue law, or a law for the general accommodation of the citizens: that the law just passed seemed to have removed the doubt, by declaring that the whole profits of the office should be applied to extending the posts, and that even the past profits should be refunded by the treasury for the same purpose: that I therefore conceive it was now in the department of the Secretary of State: that I thought it would be advantageous so to declare it for another reason, to wit: that the department of the Treasury possessed already such an influence as to swallow up the whole executive powers, and that even the future Presidents (not supported by the weight of character which himself possessed,) would not be able to make head against this department. That in urging this measure I had certainly no personal interest, since, if I was supposed to have any appetite for power, yet as my career would certainly be exactly as short as his own, the intervening time was too short to be an object. My real wish was to avail the public of every occasion, during the residue of the President's period, to place things on a safe footing. He was now called on to attend his company, and he desired me to come and breakfast with him the next morning.

February the 29th. I did so; and after breakfast we retired to his room, and I unfolded my plan for the post office, and after such an approbation of it as he usually permitted himself on the first presentment of any idea, and desiring me to commit it to writing, he, during that pause of conversation which follows a business closed, said in an affectionate tone, that he had felt much concern at an expression which dropped from me yesterday, and which marked my intention of retiring when he should. That as to himself, many motives obliged him to it. He had, through the whole course of the war, and most particularly at the close of it, uniformly declared his resolution to retire from public affairs, and never to act in any public office; that he had retired under that firm resolution: that the government, however, which had been formed, being found evidently too inefficacious, and it being supposed that his aid was of some consequence towards bringing the people to consent to one of sufficient efficacy for their own good, he consented to come into the convention, and on the same motive, after much pressing, to take a part in the new government, and get it under way. That were he to continue longer, it might give room to say, that having tasted the sweets of office, he could not do without them: that he really felt himself growing old, his bodily health less firm, his memory, always bad, becoming worse, and perhaps the other faculties of his mind showing a decay to others of which he was insensible himself;

that this apprehension particularly oppressed him: that he found, moreover, his activity lessened, business therefore more irksome, and tranquillity and retirement become an irresistible passion. That however he felt himself obliged, for these reasons, to retire from the government, yet he should consider it as unfortunate, if that should bring on the retirement of the great officers of the government, and that this might produce a shock on the public mind of dangerous consequence.

I told him that no man had ever had less desire of entering into public offices than myself; that the circumstance of a perilous war, which brought every thing into danger, and called for all the services which every citizen could render, had induced me to undertake the administration of the government of Virginia; that I had both before and after refused repeated appointments of Congress to go abroad in that sort of office, which, if I had consulted my own gratification, would almost have been the most agreeable to me; that at the end of two years, I resigned the government of Virginia, and retired with a firm resolution never more to appear in public life; that a domestic loss, however, happened, and made me fancy that absence and a change of scene for a time might be expedient for me; that I therefore accepted a foreign appointment, limited to two years; that at the close of that, Doctor Franklin having left France, I was appointed to supply his place, which I had accepted,

and though I continued in it three or four years, it was under the constant idea of remaining only a year or two longer; that the revolution in France coming on, I had so interested myself in the event of that, that when obliged to bring my family home, I had still an idea of returning and awaiting the close of that, to fix the era of my final retirement; that on my arrival here I found he had appointed me to my present office; that he knew I had not come into it without some reluctance; that it was, on my part, a sacrifice of inclination to the opinion that I might be more serviceable here than in France, and with a firm resolution in my mind, to indulge my constant wish for retirement at no very distant day; that when, therefore, I had received his letter, written from Mount Vernon, on his way to Carolina and Georgia, (April the 1st, 1791) and discovered, from an expression in that, that he meant to retire from the government ere long, and as to the precise epoch there could be no doubt, my mind was immediately made up, to make that the epoch of my own retirement from those labors of which I was heartily tired. That, however, I did not believe there was any idea in any of my brethren in the administration of retiring; that on the contrary, I had perceived at a late meeting of the trustees of the sinking fund, that the Secretary of the Treasury had developed the plan he intended to pursue, and that it embraced years in its view.

He said, that he considered the Treasury depart-

ment as a much more limited one, going only to the single object of revenue, while that of the Secretary of State, embracing nearly all the objects of administration, was much more important, and the retirement of the officer therefore, would be more noticed: that though the government had set out with a pretty general good will of the public, yet that symptoms of dissatisfaction had lately shown themselves far beyond what he could have expected, and to what height these might arise, in case of too great a change in the administration, could not be foreseen.

I told him, that in my opinion, there was only a single source of these discontents. Though they had indeed appeared to spread themselves over the War department also, yet I considered that as an overflowing only from their real channel, which would never have taken place, if they had not first been generated in another department, to wit, that of the Treasury. That a system had there been contrived, for deluging the States with paper money instead of gold and silver, for withdrawing our citizens from the pursuits of commerce, manufactures, buildings, and other branches of useful industry, to occupy themselves and their capitals in a species of gambling, destructive of morality, and which had introduced its poison into the government itself. That it was a fact, as certainly known as that he and I were then conversing, that particular members of the legislature, while those laws were on the carpet, had feathered their nests with paper,

had then voted for the laws, and constantly since lent all the energy of their talents, and instrumentality of their offices, to the establishment and enlargement of this system; that they had chained it about our necks for a great length of time, and in order to keep the game in their hands had, from time to time, aided in making such legislative constructions of the constitution, as made it a very different thing from what the people thought they had submitted to; that they had now brought forward a proposition far beyond any one ever yet advanced, and to which the eyes of many were turned, as the decision which was to let us know, whether we live under a limited or an unlimited government. He asked me to what proposition I alluded? I answered, to that in the report on manufactures, which, under color of giving *bounties* for the encouragement of particular manufactures, meant to establish the doctrine, that the power given by the constitution to collect taxes to provide for the *general welfare* of the United States, permitted Congress to take everything under their management which *they* should deem for the *public welfare*, and which is susceptible of the application of money; consequently, that the subsequent enumeration of their powers was not the description to which resort must be had, and did not at all constitute the limits of their authority; that this was a very different question from that of the bank, which was thought an incident to an enumerated

power; that, therefore, this decision was expected with great anxiety; that, indeed, I hoped the proposition would be rejected, believing there was a majority in both Houses against it, and that if it should be, it would be considered as a proof that things were returning into their true channel; and that, at any rate, I looked forward to the broad representation which would shortly take place, for keeping the general constitution on its true ground; and that this would remove a great deal of the discontent which had shown itself. The conversation ended with this last topic. It is here stated nearly as much at length as it really was; the expressions preserved where I could recollect them, and their substance always faithfully stated.

March 1, 1792.

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On the 2d of January, 1792, Messrs. Fitzsimmons and Gerry (among others) dined with me. These two staid, with a Mr. Larned of Connecticut, after the company was gone. We got on the subject of references by the legislature to the Heads of departments, considering their mischief in every direction. Gerry and Fitzsimmons clearly opposed to them.

Two days afterwards (January the 4th), Mr. Bourne from Rhode Island presented a memorial from his State, complaining of inequality in the Assumption, and moved to refer it to the Secretary of the Treasury. Fitzsimmons, Gerry and others opposed it; but it was carried.

January the 19th. Fitzsimmons moved, that the *President of the United States* be requested to direct the Secretary of the Treasury, to lay before the House information to enable the legislature to judge of the additional revenue necessary on the increase of the military establishment. The House, on debate, struck out the words, "President of the United States."

March the 7th. The subject resumed. An animated debate took place on the tendency of references to the Heads of departments; and it seemed that a great majority would be against it; the House adjourned. Treasury greatly alarmed, and much industry supposed to be used before next morning, when it was brought on again, and debated through the day, and on the question, the Treasury carried it by thirty-one to twenty-seven; but deeply wounded, since it was seen that all Pennsylvania, except Jacobs, voted against the reference; that Tucker of South Carolina voted for it, and Sumpter absented himself, debauched for the moment only, because of the connection of the question with a further Assumption which South Carolina favored; but showing that they never were to be counted on among the Treasury votes. Some others absented themselves. Gerry changed sides. On the whole, it showed that Treasury influence was tottering.

Committed to writing this 10th of March, 1792.

March the 11th, 1792. Consulted verbally by the President, on whom a committee of the Senate (Izard, Morris, and King) are to wait to-morrow morning, to know whether he will think it proper to redeem our Algerine captives, and make a treaty with the Algerines, on the single vote of the Senate, without taking that of the Representatives.

My opinions run on the following heads:

We must go to Algiers with cash in our hands. Where shall we get it? By loan? By converting money now in the treasury?

Probably a loan might be obtained on the President's authority; but as this could not be repaid without a subsequent act of legislature, the Representatives might refuse it. So if money in the treasury be converted, they may refuse to sanction it.

The subsequent approbation of the Senate being necessary to validate a treaty, they expect to be consulted beforehand, if the case admits.

So the subsequent act of the Representatives being necessary where money is given, why should not they expect to be consulted in like manner, when the case admits. A treaty is a law of the land. But prudence will point out this difference to be attended to in making them; viz. where a treaty contains such articles only as will go into execution of themselves, or be carried into execution by the judges, they may be safely made; but where there are articles which require a law to be passed afterwards by the legislature, great caution is requisite.

For example; the consular convention with France required a very small legislative regulation. This convention was unanimously ratified by the Senate. Yet the same identical men threw by the law to enforce it at the last session, and the Representatives at this session have placed it among the laws which they may take up or not, at their own convenience, as if that was a higher motive than the public faith.

Therefore, against hazarding this transaction without the sanction of both Houses.

The President concurred. The Senate express the motive for this proposition, to be a fear that the Representatives would not keep the secret. He has no opinion of the secrecy of the Senate. In this very case, Mr. Izard made the communication to him, sitting next to him at table, on one hand, while a lady (Mrs. McLane) was on his other hand, and the French minister next to her; and as Mr. Izard got on with his communication, his voice kept rising, and his stutter bolting the words out loudly at intervals, so that the minister might hear if he would. He said he had a great mind at one time to have got up in order to put a stop to Mr. Izard.

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March the 11th, 1792. Mr. Sterret tells me, that sitting round a fire the other day with four or five others, [Mr. Smith of South Carolina was one], somebody mentioned that the murderers of Hogeboom,

sheriff of Columbia county, New York, were acquitted. "Aye," says Smith, "this is what comes of your damned *trial by jury*."

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1791. Towards the latter end of November, Hamilton had drawn Ternant into a conversation on the subject of the treaty of commerce recommended by the National Assembly of France to be negotiated with us, and, as he had no ready instructions on the subject, he led him into a proposal that Ternant should take the thing up as a volunteer with me, that we should arrange conditions, and let them go for confirmation or refusal. Hamilton communicated this to the President, who came into it, and proposed it to me. I disapproved of it, observing, that such a volunteer project would be binding on us, and not them; that it would enable them to find out how far we would go, and avail themselves of it. However, the President thought it worth trying, and I acquiesced. I prepared a plan of treaty for exchanging the privileges of native subjects, and fixing all duties forever as they now stood. Hamilton did not like this way of fixing the duties, because, he said, many articles here would bear to be raised, and therefore, he would prepare a tariff. He did so, raising duties for the French, from twenty-five to fifty per cent. So they were to give us the privileges of native subjects, and we, as a compensation, were to make them pay higher duties. Hamilton, having made his arrangements with Ham-

mond to pretend that though he had no powers to conclude a treaty of commerce, yet his general commission authorized him to enter into the discussion of one, then proposed to the President at one of our meetings, that the business should be taken up with Hammond in the same informal way. I now discovered the trap which he had laid, by first getting the President into that step with Ternant. I opposed the thing warmly. Hamilton observed, if we did it with Ternant we should also with Hammond. The President thought this reasonable. I desired him to recollect, I had been against it with Ternant, and only acquiesced under his opinion. So the matter went off as to both. His scheme evidently was, to get us engaged first with Ternant, merely that he might have a pretext to engage us on the same ground with Hammond, taking care, at the same time, by an extravagant tariff, to render it impossible we should come to any conclusion with Ternant: probably meaning, at the same time, to propose terms so favorable to Great Britain, as would attach us to that country by treaty. On one of those occasions he asserted, that our commerce with Great Britain and her colonies was put on a much more favorable footing than with France and her colonies. I therefore prepared the tabular comparative view of the footing of our commerce with those nations, which see among my papers. See also my project of a treaty and Hamilton's tariff.

Committed to writing March the 11th, 1792.

It was observable, that whenever, at any of our consultations, anything was proposed as to Great Britain, Hamilton had constantly ready something which Mr. Hammond had communicated to him, which suited the subject and proved the intimacy of their communications; insomuch, that I believe he communicated to Hammond all our views, and knew from him, in return, the views of the British court. Many evidences of this occurred; I will state some. I delivered to the President my report of instructions for Carmichael and Short, on the subject of navigation, boundary and commerce, and desired him to submit it to Hamilton. Hamilton made several just criticisms on different parts of it. But where I asserted that the United States had no right to alienate an inch of the territory of any State, he attacked and denied the doctrine. See my report, his note, and my answer. A few days after came to hand Kirkland's letter, informing us that the British, at Niagara, expected to run a new line between themselves and us; and the reports of Pond and Stedman, informing us it was understood at Niagara, that Captain Stevenson had been sent here by Simcoe to settle that plan with Hammond. Hence Hamilton's attack of the principle I had laid down, in order to prepare the way for this new line. See minute of March the 9th. Another proof. At one of our consultations, about the last of December, I mentioned that I wished to give in my report on commerce, in which I could not avoid recommending a commercial

retaliation against Great Britain. Hamilton opposed it violently; and among other arguments, observed, that it was of more importance to us to have the posts than to commence a commercial war; that this, and this alone, would free us from the expense of the Indian wars; that it would therefore be the height of imprudence in us, while treating for the surrender of the posts, to engage in anything which would irritate them; that if we did so, they would naturally say, "these people mean war, let us therefore hold what we have in our hands." This argument struck me forcibly, and I said, "if there is a hope of obtaining the posts, I agree it would be imprudent to risk that hope by a commercial retaliation. I will, therefore, wait till Mr. Hammond gives me in his assignment of breaches, and if that gives a glimmering of hope that they mean to surrender the posts, I will not give in my report till the next session." Now, Hammond had received my assignment of breaches on the 15th of December, and about the 22d or 23d had made me an apology for not having been able to send me his counter-assignment of breaches; but in terms which showed I might expect it in a few days. From the moment it escaped my lips in the presence of Hamilton, that I would not give in my report till I should see Hammond's counter-complaint, and judge if there was a hope of the posts, Hammond never said a word to me on any occasion, as to the time he should be ready. At length the President

got out of patience, and insisted I should jog him. This I did on the 21st of February, at the President's assembly: he immediately promised I should have it in a few days, and accordingly, on the 5th of March I received it.

Written March the 11th, 1792.

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March the 12th, 1792. Sent for by the President, and desired to bring the letter he had signed to the King of France. Went. He said the House of Representatives had, on Saturday, taken up the communication he had made of the King's letter to him, and come to a vote in their own name; that he did not expect this when he sent this message and the letter, otherwise he would have sent the message without the letter, as I had proposed. That he apprehended the legislature would be endeavoring to invade the executive. I told him, I had understood the House had resolved to request him to join their congratulations to his on the completion and acceptance of the constitution; on which part of the vote, there were only two dissentients, (Barnwell and Benson;) that the vote was thirty-five to sixteen on that part which expressed an approbation of the wisdom of the constitution; that in the letter he had signed, I had avoided saying a word in approbation of the constitution, not knowing whether the King, in his heart, approved it. Why, indeed, said he, I begin to doubt very much

of the affairs of France; there are papers from London as late as the 10th of January, which represent them as going into confusion. He read over the letter he had signed, found there was not a word which could commit his judgment about the constitution, and gave it to me back again. This is one of many proofs I have had, of his want of confidence in the event of the French revolution. The fact is, that Gouverneur Morris, a high-flying monarchy man, shutting his eyes and his faith to every fact against his wishes, and believing everything he desires to be true, has kept the President's mind constantly poisoned with his forebodings. That the President wishes the revolution may be established, I believe from several indications. I remember, when I received the news of the King's flight and capture, I first told him of it at his assembly. I never saw him so much dejected by any event in my life. He expressed clearly, on this occasion, his disapprobation of the legislature referring things to the Heads of Departments.

Written March the 12th.

*Eodem die.* Ten o'clock, A. M. The preceding was about nine o'clock. The President now sends Lear to me, to ask what answer he shall give to the committee, and particularly, whether he shall add to it, that, "in making the communication, it was not his expectation that the House should give any answer." I told Mr. Lear that I thought the House

had a right, independently of legislation, to express sentiments on other subjects. That when these subjects did not belong to any other branch particularly, they would publish them by their own authority; that in the present case, which respected a foreign nation, the President being the organ of our nation with other nations, the House would satisfy their duty, if, instead of a direct communication, they should pass their sentiments through the President; that if expressing a sentiment were really an invasion of the executive power, it was so faint a one, that it would be difficult to demonstrate it to the public, and to a public partial to the French revolution, and not disposed to consider the approbation of it from any quarter as improper. That the Senate, indeed, had given many indications of their wish to invade the executive power: the Representatives had done it in one case, which was indeed mischievous and alarming; that of giving orders to the Heads of the Executive Departments, without consulting the President; but that the late vote for directing the Secretary of the Treasury to report ways and means, though carried, was carried by so small a majority, and with the aid of members so notoriously under a local influence on that question, as to give a hope that the practice would be arrested, and the constitutional course be taken up, of asking the President to have information laid before them. But that in the present instance, it was so far from being clearly an invasion of the Executive, and would

be so little approved by the general voice, that I could not advise the President to express any dissatisfaction at the vote of the House; and I gave Lear, in writing, what I thought should be his answers. See it.

CABINET MEETINGS.

March the 31st. A meeting at the President's; present, Thomas Jefferson, Alexander Hamilton, Henry Knox and Edmond Randolph. The subject was the resolution of the House of Representatives, of March the 27th, to appoint a committee to inquire into the causes of the failure of the late expedition under Major General St. Clair, with the power to call for such persons, papers and records, as may be necessary to assist their inquiries. The committee had written to Knox for the original letters, instructions, &c. The President had called us to consult, merely because it was the first example, and he wished that so far as it should become a precedent, it should be rightly conducted. He neither acknowledged nor denied, nor even doubted the propriety of what the House were doing, for he had not thought upon it, nor was acquainted with subjects of this kind: he could readily conceive there might be papers of so secret a nature, as that they ought not to be given up. We were not prepared, and wished time to think and inquire.

April the 2d. Met again at the President's, on the same subject. We had all considered, and were

of one mind, first, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public: consequently were to exercise a discretion. Fourth, that neither the committee nor House had a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President. We had principally consulted the proceedings of the Commons in the case of Sir Robert Walpole, 13 Chandler's Debates. For the first point, see pages 161, 170, 172, 183, 187, 207; for the second, pages 153, 173, 207; for the third, 81, 173, appendix page 44; fourth, page 246. Note; Hamilton agreed with us in all these points, except as to the power of the House to call on Heads of Departments.

He observed, that as to his Department, the act constituting it had made it subject to Congress in some points, but he thought himself not so far subject, as to be obliged to produce all the papers they might call for. They might demand secrets of a very mischievous nature. [Here I thought he began to fear they would go on to examining how far their own members and other persons in the government had been dabbling in stocks, banks, &c., and that he probably would choose in this case to deny their

power; and, in short, he endeavored to place himself subject to the House, when the Executive should propose what he did not like, and subject to the Executive, when the House should propose anything disagreeable.] I observed here a difference between the British Parliament and our Congress; that the former was a legislature, an inquest, and a council (S. C. page 91.) for the King. The latter was, by the constitution, a legislature and an inquest, but not a council. Finally agreed, to speak separately to the members of the committee, and bring them by persuasion into the right channel. It was agreed in this case, that there was not a paper which might not be properly produced; that copies only should be sent, with an assurance, that if they should desire it, a clerk should attend with the originals to be verified by themselves. The committee were Fitzsimmons, Steele, Mercer, Clarke, Sedgwick, Giles and Vining.

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April the 9th, 1792. The President had wished to redeem our captives at Algiers, and to make peace with them on paying an annual tribute. The Senate were willing to approve this, but unwilling to have the lower House applied to previously to furnish the money; they wished the President to take the money from the treasury, or open a loan for it. They thought that to consult the Representatives on one occasion, would give them a handle always to claim

it, and would let them into a participation of the power of making treaties, which the Constitution had given exclusively to the President and Senate. They said too, that if the particular sum was voted by the Representatives, it would not be a secret. The President had no confidence in the secrecy of the Senate, and did not choose to take money from the Treasury or to borrow. But he agreed he would enter into provisional treaties with the Algerines, not to be binding on us till ratified here. I prepared questions for consultation with the Senate, and added, that the Senate were to be apprized, that on the return of the provisional treaty, and after they should advise the ratification, he would not have the seal put to it till the two Houses should vote the money. He asked me, if the treaty stipulating a sum and ratified by him, with the advice of the Senate, would not be good under the Constitution, and obligatory on the Representatives to furnish the money? I answered it certainly would, and that it would be the duty of the Representatives to raise the money; but that they might decline to do what was their duty, and I thought it might be incautious to commit himself by a ratification with a foreign nation, where he might be left in the lurch in the execution: it was possible too, to conceive a treaty, which it would not be their duty to provide for. He said that he did not like throwing too much into democratic hands, that if they would not do what the Constitution called on them to do, the Government

would be at an end, and must *then assume another form.* He stopped here; and I kept silence to see whether he would say anything more in the same line, or add any qualifying expression to soften what he had said; but he did neither.

I had observed, that wherever the agency of either, or both Houses would be requisite subsequent to a treaty, to carry it into effect, it would be prudent to consult them previously, if the occasion admitted. That thus it was, we were in the habit of consulting the Senate previously, when the occasion permitted, because their subsequent ratification would be necessary. That there was the same reason for consulting the lower House previously, where they were to be called on afterwards, and especially in the case of money, as they held the purse strings, and would be jealous of them. However, he desired me to strike out the intimation that the seal would not be put till both Houses should have voted the money.

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April the 6th. The President called on me before breakfast, and first introduced some other matter, then fell on the representation bill, which he had now in his possession for the tenth day. I had before given him my opinion in writing, that the method of apportionment was contrary to the Constitution. He agreed that it was contrary to the common understanding of that instrument, and to what was understood at the time by the makers of it; that yet it

would bear the construction which the bill put, and he observed that the vote for and against the bill was perfectly geographical, a northern against a southern vote, and he feared he should be thought to be taking side with a southern party. I admitted the motive of delicacy, but that it should not induce him to do wrong; urged the dangers to which the scramble for the fractionary members would always lead. He here expressed his fear that there would, ere long, be a separation of the Union; that the public mind seemed dissatisfied and tending to this. He went home, sent for Randolph, the Attorney General, desired him to get Mr. Madison immediately and come to me, and if we three concurred in opinion that he should negative the bill, he desired to hear nothing more about it, but that we would draw the instrument for him to sign. They came. Our minds had been before made up. We drew the instrument. Randolph carried it to him, and told him we all concurred in it. He walked with him to the door, and as if he still wished to get off, he said, "and you say you approve of this yourself." "Yes Sir," said Randolph, "I do upon my honor." He sent it to the House of Representatives instantly. A few of the hottest friends of the bill expressed passion, but the majority were satisfied, and both in and out of doors it gave pleasure to have, at length, an instance of the negative being exercised.

Written this the 9th of April.

July the 10th, 1792. My letter of —— to the President, directed to him at Mount Vernon, had not found him there, but came to him here. He told me of this, and that he would take an occasion of speaking with me on the subject. He did so this day. He began by observing that he had put it off from day to day, because the subject was painful, to wit, his remaining in office, which that letter solicited. He said that the declaration he had made when he quitted his military command, of never again entering into public life, was sincere. That, however, when he was called on to come forward to set the present government in motion, it appeared to him that circumstances were so changed as to justify a change in his resolution: he was made to believe that in two years all would be well in motion, and he might retire. At the end of two years he found some things still to be done. At the end of the third year, he thought it was not worth while to disturb the course of things, as in one year more his office would expire, and he was decided then to retire. Now he was told there would still be danger in it. Certainly, if he thought so, he would conquer his longing for retirement. But he feared it would be said his former professions of retirement had been mere affectation, and that he was like other men, when once in office he could not quit it. He was sensible, too, of a decay of his hearing, perhaps his other faculties might fall off and he not be sensible of it. That with respect to the existing

causes of uneasiness, he thought there were suspicions against a particular party, which had been carried a great deal too far; there might be *desires*, but he did not believe there were *designs* to change the form of government into a monarchy; that there might be a few who wished it in the higher walks of life, particularly in the great cities, but that the main body of the people in the eastern States were as steadily for republicanism as in the southern. That the pieces lately published, and particularly in Freneau's paper, seemed to have in view the exciting opposition to the Government. That this had taken place in Pennsylvania as to the excise law, according to information he had received from General Hand. That they tended to produce a separation of the Union, the most dreadful of all calamities, and that whatever tended to produce anarchy, tended, of course, to produce a resort to monarchical government.

He considered those papers as attacking him directly, for he must be a fool indeed to swallow the little sugar plums here and there thrown out to him. That in condemning the administration of the Government, they condemned him, for if they thought there were measures pursued contrary to his sentiments, they must conceive him too careless to attend to them, or too stupid to understand them. That though, indeed, he had signed many acts which he did not approve in all their parts, yet he had never put his name to one which he did not think, on the whole, was eligible. That as to

the bank, which had been an act of so much complaint, until there was some infallible criterion of reason, a difference of opinion must be tolerated. He did not believe the discontents extended far from the seat of Government. He had seen and spoken with many people in Maryland and Virginia in his late journey. He found the people contented and happy. He wished, however, to be better informed on this head. If the discontents were more extensive than he supposed, it might be that the desire that he should remain in the Government was not general.

My observations to him tended principally to enforce the topics of my letter. I will not, therefore, repeat them, except where they produced observations from him. I said that the two great complaints were, that the national debt was unnecessarily increased, and that it had furnished the means of corrupting both branches of the legislature; that he must know, and everybody knew, there was a considerable squadron in both, whose votes were devoted to the paper and stock-jobbing interest, that the names of a weighty number were known, and several others suspected on good grounds. That on examining the votes of these men, they would be found uniformly for every Treasury measure, and that as most of these measures had been carried by small majorities, they were carried by these very votes. That, therefore, it was a cause of just uneasiness, when we saw a legislature legislating for their

own interests, in opposition to those of the people. He said not a word on the corruption of the legislature, but took up the other point, defended the Assumption, and argued that it had not increased the debt, for that all of it was honest debt. He justified the excise law, as one of the best laws which could be passed, as nobody would pay the tax who did not choose to do it. With respect to the increase of the debt by the Assumption, I observed to him that what was meant and objected to was, that it increased the debt of the General Government, and carried it beyond the possibility of payment. That if the balances had been settled, and the debtor States directed to pay their deficiences to the creditor States, they would have done it easily, and by resources of taxation in their power, and acceptable to the people; by a direct tax in the south, and an excise in the north. Still, he said, it would be paid by the people. Finding him decided, I avoided entering into argument with him on those points.

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Sept. the 30th, 1792. The constitution as agreed to till a fortnight before the Convention rose, was such a one as he would have set his hand and heart to. 1st. The President was to be elected for seven years. Then ineligible for seven years more. 2d. Rotation in the Senate. 3d. A vote of two-thirds in the legislature on particular subjects, and expressly on that of navigation. The three New England

States were constantly with us in all questions (Rhode Island not there, and New York seldom), so that it was these three States, with the five southern ones, against Pennsylvania, New Jersey, and Delaware.

With respect to the importation of slaves, it was left to Congress. This disturbed the two southernmost States, who knew that Congress would immediately suppress the importation of slaves. These two States, therefore, struck up a bargain with the three New England States. If they would join to admit slaves for some years, the southernmost States would join in changing the clause which required two-thirds of the legislature in any vote. It was done. These articles were changed accordingly, and from that moment the two southernmost States, and the three northern ones, joined Pennsylvania, New Jersey and Delaware, and made the majority eight to three against us, instead of eight to three for us, as it had been through the whole Convention. Under this coalition, the great principles of the constitution were changed in the last days of the Convention.

Anecdote. Yates, Lawsing and Hamilton represented New York. Yates and Lawsing never voted in one single instance with Hamilton, who was so much mortified at it that he went home. When the season for courts came on, Yates, a judge, and Lawsing, a lawyer, went to attend their courts. Then Hamilton returned.

ANECDOTE. The constitution as agreed at first was, that amendments might be proposed either by Congress or the legislatures. A committee was appointed to digest and redraw. Gouverneur Morris and King were of the committee. One morning Gouverneur Morris moved an instrument for certain alterations (not one-half the members yet come in). In a hurry and without understanding, it was agreed to. The committee reported so that Congress should have the exclusive power of proposing amendments. George Mason observed it on the report, and opposed it. King denied the construction. Mason demonstrated it, and asked the committee by what authority they had varied what had been agreed. Gouverneur Morris then imprudently got up, and said, by authority of the Convention, and produced the blind instruction before mentioned, which was unknown by one-half of the House, and not till then understood by the other. They then restored it, as it originally stood.

He said he considered Hamilton as having done us more injury than Great Britain and all her fleets and armies. That his (Mason's) plan of settling our debts would have been something in this way. He would have laid as much tax as could be paid without oppressing the people;—particularly he would have laid an impost of about the amount of the first, laid by Congress, but somewhat different in several of its articles. He would have suspended all application of it one year, during which an office should have

been open to register unalienated certificates. At the end of the year he would have appropriated his revenue. 1st. To pay the civil list. 2d. The interest of these certificates. 3d. Instalments of the principal. 4th. A surplus to buy up the alienated certificates, still avoiding to make any other provision for these last. By the time the unalienated certificates should have been all paid, he supposed half the alienated ones would have been bought up at market. He would then have proceeded to redeem the residue of them.

### CONVERSATION WITH PRESIDENT WASHINGTON.

Bladensburg, October the 1st, 1792. This morning, at Mount Vernon, I had the following conversation with the President. He opened it by expressing his regret at the resolution in which I appeared so fixed, in the letter I had written him, of retiring from public affairs. He said, that he should be extremely sorry that I should do it, as long as he was in office, and that he could not see where he should find another character to fill my office. That, as yet, he was quite undecided whether to retire in March or not. His inclinations led him strongly to do it. Nobody disliked more the ceremonies of his office, and he had not the least taste or gratification in the execution of its functions. That he was happy at home alone, and that his presence there was now peculiarly called for by the situation of Major Washington, whom he thought irrecoverable, and should

he get well, he would remove into another part of the country, which might better agree with him. That he did not believe his presence necessary; that there were other characters who would do the business as well or better. Still, however, if his aid was thought necessary to save the cause to which he had devoted his life principally, he would make the sacrifice of a longer continuance. That he therefore reserved himself for future decision, as his declaration would be in time if made a month before the day of election. He had desired Mr. Lear to find out from conversation, without appearing to make the inquiry, whether any other person would be desired by any body. He had informed him, he judged from conversations that it was the universal desire he should continue, and he believed that those who expressed a doubt of his continuance, did it in the language of apprehension, and not of desire. But this, said he, is only from the north; it may be very different in the south. I thought this meant as an opening to me to say what was the sentiment in the south, from which quarter I came. I told him, that as far as I knew, there was but one voice there, which was for his continuance. That as to myself, I had ever preferred the pursuits of private life to those of public, which had nothing in them agreeable to me.

I explained to him the circumstances of the war which had first called me into public life, and those following the war, which had called me from a retirement on which I had determined. That I had con-

stantly kept my eye on my own home, and could no longer refrain from returning to it. As to himself, his presence was important; that he was the only man in the United States who possessed the confidence of the whole; that government was founded in opinion and confidence, and that the longer he remained, the stronger would become the habits of the people in submitting to the Government, and in thinking it a thing to be maintained; that there was no other person who would be thought anything more than the head of a party. He then expressed his concern at the difference which he found to subsist between the Secretary of the Treasury and myself, of which he said he had not been aware. He knew, indeed, that there was a marked difference in our political sentiments, but he had never suspected it had gone so far in producing a personal difference, and he wished he could be the mediator to put an end to it. That he thought it important to preserve the check of my opinions in the Administration, in order to keep things in their proper channel, and prevent them from going too far. That as to the idea of transforming this Government into a monarchy, he did not believe there were ten men in the United States whose opinions were worth attention, who entertained such a thought. I told him there were many more than he imagined. I recalled to his memory a dispute at his own table, a little before we left Philadelphia, between General Schuyler on one side and Pinckney and myself on the other, wherein

the former maintained the position, that hereditary descent was as likely to produce good magistrates as election. I told him, that though the people were sound, there were a numerous sect who had monarchy in contemplation; that the Secretary of the Treasury was one of these. That I had heard him say that this Constitution was a shilly shally thing, of mere milk and water, which could not last, and was only good as a step to something better. That when we reflected, that he had endeavored in the convention, to make an English constitution of it, and when failing in that, we saw all his measures tending to bring it to the same thing, it was natural for us to be jealous; and particularly, when we saw that these measures had established corruption in the legislature, where there was a squadron devoted to the nod of the Treasury, doing whatever he had directed, and ready to do what he should direct. That if the equilibrium of the three great bodies, legislative, executive and judiciary, could be preserved, if the legislature could be kept independent, I should never fear the result of such a government; but that I could not but be uneasy, when I saw that the executive had swallowed up the legislative branch.

He said, that as to that interested spirit in the legislature, it was what could not be avoided in any government, unless we were to exclude particular descriptions of men, such as the holders of the funds, from all office. I told him, there was great differ-

ence between the little accidental schemes of self-interest, which would take place in every body of men, and influence their votes, and a regular system for forming a corps of interested persons, who should be steadily at the orders of the Treasury. He touched on the merits of the funding system, observed there was a difference of opinion about it, some thinking it very bad, others very good; that experience was the only criterion of right which he knew, and this alone would decide which opinion was right. That for himself, he had seen our affairs desperate and our credit lost, and that this was in a sudden and extraordinary degree raised to the highest pitch. I told him, all that was ever necessary to establish our credit, was an efficient government and an honest one, declaring it would sacredly pay our debts, laying taxes for this purpose, and applying them to it. I avoided going further into the subject. He finished by another exhortation to me not to decide too positively on retirement, and here we were called to breakfast.

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October the 31st, 1792. I had sent to the President, Viar and Jaudenes's letter of the 29th instant, whereupon he desired a consultation of Hamilton, Knox, E. Randolph, and myself, on these points: 1. What notice was to be taken hereof to Spain? 2. Whether it should make part of the communication to the legislature? I delivered my opinion, that it

ought to be communicated to both Houses, because the communications intended to be made, being to bring on the question, whether they would declare war against any, and which of the nations or parts of the nations of Indians to the south, it would be proper this information should be before them, that they might know how far such a declaration would lead them. There might be some who would be for war against the Indians, if it were to stop there, but who would not be for it, if it were to lead to a war against Spain. I thought it should be laid before both Houses, because it concerned the question of declaring war, which was the function equally of both Houses. I thought a simple acknowledgment of the receipt of the letter should be made by me to the Spanish Chargés, expressing that it contained some things very unexpected to us, but that we should refer the whole, as they had proposed, to the negotiators at Madrid. This would secure to us a continuation of the suspension of Indian hostilities, which the Governor of New Orleans said he had brought about till the result of the negotiation at Madrid should be known; would not commit us as to running or not running the line, or imply any admission of doubt about our territorial right; and would avoid a rupture with Spain, which was much to be desired, while we had similar points to discuss with Great Britain.

Hamilton declared himself the advocate for peace. War would derange our affairs greatly; throw us

back many years in the march toward prosperity; be difficult for us to pursue, our countrymen not being disposed to become soldiers; a part of the Union feeling no interest in the war, would with difficulty be brought to exert itself; and we had no navy. He was for everything which would procrastinate the event. A year, even, was a great gain to a nation strengthening as we were. It laid open to us, too, the chapter of accidents, which, in the present state of Europe, was a very pregnant one. That while, however, he was for delaying the event of war, he had no doubt it was to take place between us for the object in question; that jealousy and perseverance were remarkable features in the character of the Spanish government, with respect to their American possessions; that so far from receding as to their claims against us, they had been strengthening themselves in them. He had no doubt the present communication was by authority from the court.

Under this impression, he thought we should be looking forward to the day of rupture, and preparing for it. That if we were unequal to the contest ourselves, it behooved us to provide allies for our aid. That in this view, but two nations could be named, France and England. France was too intimately connected with Spain in other points, and of too great mutual value, ever to separate for us. Her affairs too, were such, that whatever issue they had, she could not be in a situation to

make a respectable mediation for us. England alone, then, remained. It would not be easy to affect it with her; however, he was for trying it, and for sounding them on the proposition of a defensive treaty of alliance. The inducements to such a treaty, on their part, might be, 1. The desire of breaking up our former connections, which we knew they had long wished. 2. A continuance of the *statu quo* in commerce for ten years, which he believed would be desirable to them. 3. An admission to some navigable part of the Mississippi, by some line drawn from the Lake of the Woods to such navigable part. He had not, he said, examined the map to see how such a line might be run, so as not to make too great a sacrifice. The navigation of the Mississippi being a joint possession, we might then take measures in concert for the joint security of it. He was, therefore, for immediately sounding them on this subject through our ministers at London; yet so as to keep ourselves unengaged as long as possible, in hopes a favorable issue with Spain might be otherwise effected. But he was for sounding immediately, and for not letting slip an opportunity of securing our object.

E. Randolph concurred, in general, with me. He objected that such an alliance could not be effected without pecuniary consideration probably, which we could not give. And what was to be their aid? If men, our citizens would see their armies get foothold in the United States, with great jealousy; it

would be difficult to protect them. Even the French, during the distress of the late war, excited some jealous sentiments.

Hamilton said, money was often, but not always demanded, and the aid he should propose to stipulate would be in ships. Knox *non dissentiente.*

The President said the remedy would be worse than the disease, and stated some of the disagreeable circumstances which would attend our making such overtures.

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November, 1792. Hamilton called on me to speak about our furnishing supplies to the French colony of St. Domingo. He expressed his opinion, that we ought to be cautious, and not go too far in our application of money to their use, lest it should not be recognized by the mother country. He did not even think that some kinds of government they might establish could give a sufficient sanction.[1] I observed, that the National Convention

[1] There had been a previous consultation at the President's (about the first week in November) on the expediency of suspending payments to France, under her present situation. I had admitted that the late constitution was dissolved by the dethronement of the King; and the management of affairs surviving to the National Assembly only, this was not an integral Legislature, and therefore not competent to give a legitimate discharge for our payments: that I thought, consequently, that none should be made till some legitimate body came into place; and that I should consider the National Convention called, but not met as we had yet heard, to be a legitimate body. Hamilton doubted whether it would be a legitimate body, and whether, if the King should be re-established, he might not disallow such payments on

was now met, and would certainly establish a form of government; that as we had recognized the former government because established by authority of the *nation*, so we must recognize any other which should be established by the authority of the nation. He said we had recognized the former, because it contained an important member of the ancient, to wit: the King, and wore the appearance of his consent; but if, in any future form, they should omit the King, he did not know that we could with safety recognize it, or pay money to its order.

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November the 19th, 1792. Beckley brings me the pamphlet written by Hamilton, before the war, in answer to Common Sense. It is entitled "Plain Truth." Melancthon Smith sends it to Beckley, and in his letter says, it was not printed in New York by Loudon, because prevented by a mob, and was printed in Philadelphia, and that he has these facts from Loudon.

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November the 21st, 1792. Mr. Butler tells me, that he dined last winter with Mr. Campbell from Denmark, in company with Hamilton, Lawrence,

good grounds. Knox, for once, dared to differ from Hamilton, and to express, very submissively, an opinion, that a convention named by the whole body of the nation, would be competent to do anything. It ended by agreeing, that I should write to Gouverneur Morris to suspend payment generally, till further orders.

Dr. Shippen, T. Shippen, and one other person whom he cannot recollect. That after dinner political principles became the subject of conversation; that Hamilton declared openly, that "there was no stability, no security in any kind of government but a monarchy." That Lawrence took him up, and entered the lists of argument against him; that the dispute continued long, and grew warm, remarkably so as between them; that T. Shippen, at length, joined Lawrence in it; and in fine, that it broke up the company. Butler recommended to the company, that the dispute having probably gone farther than was intended, it ought to be considered as confined to the company.

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December the 10th, 1792. Present: Alexander Hamilton, General Knox, Edmund Randolph, and Th: Jefferson, at the President's.

It was agreed to reject meeting the Indians at the proposed treaty, rather than to admit a *mediation* by Great Britain; but to admit the presence of Governor Simcoe, not as a *party* (if that was insisted on); and that I should make a verbal communication to Mr. Hammond, in substance, as on the back hereof, which I previously read to the President.

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December the 12th. I made the communication to Mr. Hammond. He said the attendance of Governor Simcoe was a circumstance only men-

tioned by him, but not desired; that he would decline it without difficulty; declared it to be their most ardent wish that peace should take place, for their fur-trade was entirely interrupted; and he urged as decisive proof of the sincerity of their wish,—1st. That they had kept the late Indian council together six weeks at a very great expense, waiting for the Six Nations. 2d. That the Indians at that council were so perfectly satisfied of their desire that they should make peace, that they had not so much as mentioned in council the applying to the British for any supplies. I immediately communicated this to the President.

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December the 13th, 1792. The President called on me to see the model and drawings of some mills for sawing stone. After showing them, he in the course of a subsequent conversation asked me if there were not some good manufactories of porcelain in Germany; that he was in want of table china, and had been speaking to Mr. Shaw, who was going to the East Indies to bring him a set, but he found that it would not come till *he should no longer be in a situation to want it.* He took occasion a second time to observe that Shaw said it would be two years at least, before he could have the china here, before which time he said he should be where he should not need it. I think he asked the question about the manufactories in Germany merely to

have an indirect opportunity of telling me he meant to retire, and within the limits of two years.

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December the 17th. Hammond says the person is here to whom the Six Nations delivered the invitation for Simcoe to attend, who says they insisted on it, and would consider his non-attendance as an evidence that he does not wish for peace; but he says that Simcoe has not the least idea of attending; that this gentleman says we may procure in Upper Canada any quantity of provisions, which the people will salt up expressly during winter; and that he will return and carry our request whenever we are ready.

CONVERSATION WITH PRESIDENT WASHINGTON.

Thursday, December the 27th, 1792. I waited on the President on some current business. After this was over, he observed to me, that he thought it was time to endeavor to effect a stricter connection with France, and that Gouverneur Morris should be written to on this subject. He went into the circumstances of dissatisfaction between Spain and Great Britain, and us, and observed, there was no nation on whom we could rely, at all times, but France; and that, if we did not prepare in time some support, in the event of rupture with Spain and England, we might be charged with a criminal negligence. [I was much pleased with the tone of these observations. It was the very

doctrine which had been my polar star, and I did not need the successes of the republican arms in France, lately announced to us, to bring me to these sentiments. For it is to be noted, that on Saturday last (the 22d) I received Mr. Short's letters of October the 9th and 12th, with the Leyden gazettes to October the 13th, giving us the first news of the retreat of the Duke of Brunswick, and the capture of Spires and Worms by Custine, and that of Nice by Anselme.]

I therefore expressed to the President my cordial approbation of these ideas; told him I had meant on that day (as an opportunity of writing by the British packet would occur immediately) to take his orders for removing the suspension of payments to France, which had been imposed by my last letter to Gouverneur Morris, but was meant, as I supposed, only for the interval between the abolition of the late constitution by the dethronement of the King, and the meeting of some other body, invested by the will of the nation with powers to transact their affairs; that I considered the National Convention, then assembled, as such a body; and that, therefore, we ought to go on with the payments to them, or to any government they should establish; that, however, I had learned last night, that some clause in the bill for providing reimbursement of the loan made by the bank to the United States, had given rise to a question before the House of Representatives yesterday, which might affect these pay-

ments; a clause in that bill proposing, that the money formerly borrowed in Amsterdam, to pay the French debt, and appropriated by law, (1690, August 4th, c. 34, s. 2) to that purpose, lying dead as was suggested, should be taken to pay the bank, and the President be authorized to borrow two millions of dollars more, out of which it should be replaced; and if this should be done, the removal of our suspension of payments, as I had been about to propose, would be premature.

He expressed his disapprobation of the clause above mentioned; thought it highly improper in the Legislature to change an appropriation once made, and added, that no one could tell in what that would end. I concurred, but observed, that on a division of the House, the ayes for striking out the clause were twenty-seven, the noes twenty-six; whereon the Speaker gave his vote against striking out, which divides the House: the clause for the disappropriation remained of course. I mentioned suspicions, that the whole of this was a trick to serve the bank under a great existing embarrassment; that the debt to the bank was to be repaid by instalments; that the first instalment was of two hundred thousand dollars only, or rather one hundred and sixty thousand dollars, (because forty thousand of the two hundred thousand dollars would be the United States' own dividend of the instalment). Yet here were two millions to be paid them at once, and to be taken from a purpose

of gratitude and honor, to which it had been appropriated.

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December the 30th, 1792. I took the occasion furnished by Pinckney's letter of September the 19th, asking instructions how to conduct himself as to the French revolution, to lay down the catholic principle of republicanism, to wit, that every people may establish what form of government they please, and change it as they please; the will of the nation being the only thing essential. I was induced to do this, in order to extract the President's opinion on the question which divided Hamilton and myself in the conversation of November, 1792, and the previous one of the first week of November, on the suspension of payments to France; and if favorable to mine, to place the principles of record in the letter books of my office. I therefore wrote the letter of December the 30th, to Pinckney, and sent it to the President, and he returned me his approbation in writing, in his note of the same date, which see.

CONVERSATION WITH PRESIDENT WASHINGTON.

February the 7th, 1793. I waited on the President with letters and papers from Lisbon. After going through these, I told him that I had for some time suspended speaking with him on the subject of my going out of office, because I had understood that the bill for intercourse with foreign nations

was likely to be rejected by the Senate, in which case, the remaining business of the Department would be too inconsiderable to make it worth while to keep it up. But that the bill being now passed, I was freed from the considerations of propriety which had embarrassed me. That &c. [nearly in the words of a letter to Mr. T. M. Randolph, of a few days ago,] and that I should be willing, if he had taken no arrangements to the contrary, to continue somewhat longer, how long I could not say, perhaps till summer, perhaps autumn. He said, so far from taking arrangements on the subject, he had never mentioned to any mortal the design of retiring which I had expressed to him, till yesterday, when having heard that I had given up my house, and that it was rented by another, he thereupon mentioned it to Mr. E. Randolph, and asked him, as he knew my retirement had been talked of, whether he had heard any persons suggested in conversation to succeed me. He expressed his satisfaction at my change of purpose, and his apprehensions that my retirement would be a new source of uneasiness to the public. He said Governor Lee had that day informed him of the general discontent prevailing in Virginia, of which he never had had any conception, much less sound information. That it appeared to him very alarming. He proceeded to express his earnest wish that Hamilton and myself could coalesce in the measures of the government, and urged here the general reasons for it

which he had done to me in two former conversations. He said he had proposed the same thing to Hamilton, who expressed his readiness, and he thought our coalition would secure the general acquiescence of the public.

I told him my concurrence was of much less importance than he seemed to imagine; that I kept myself aloof from all cabal and correspondence on the subject of the Government, and saw and spoke with as few as I could. That as to a coalition with Mr. Hamilton, if by that was meant that either was to sacrifice his general system to the other, it was impossible. We had both, no doubt, formed our conclusions after the most mature consideration; and principles conscientiously adopted, could not be given up on either side. My wish was, to see both Houses of Congress cleansed of all persons interested in the bank or public stocks; and that a pure legislature being given us, I should always be ready to acquiesce under their determinations, even if contrary to my own opinions; for that I subscribe to the principle, that the will of the majority, honestly expressed, should give law. I confirmed him in the fact of the great discontents to the south; that they were grounded on seeing that their judgments and interests were sacrificed to those of the eastern States on every occasion, and their belief that it was the effect of a corrupt squadron of voters in Congress, at the command of the Treasury; and they see that if the votes of those members who

had any interest distinct from, and contrary to the general interest of their constituents, had been withdrawn, as in decency and honesty they should have been, the laws would have been the reverse of what they are on all the great questions. I instanced the new Assumption carried in the House of Representatives by the Speaker's vote. On this subject he made no reply.

He explained his remaining in office to have been the effect of strong solicitations after he returned here; declaring that he had never mentioned his purpose of going out but to the Heads of Departments and Mr. Madison; he expressed the extreme wretchedness of his existence while in office, and went lengthily into the late attacks on him for levees, &c., and explained to me how he had been led into them by the persons he consulted at New York; and that if he could but know what the sense of the public was, he would most cheerfully conform to it.

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February the 16th, 1793. E. Randolph tells J. Madison and myself, a curious fact which he had from Lear. When the President went to New York, he resisted for three weeks the efforts to introduce levees. At length he yielded, and left it to Humphreys and some others to settle the forms. Accordingly, an ante-chamber and presence room were provided, and when those who were to pay their court were assembled, the President set out,

preceded by Humphreys. After passing through the ante-chamber, the door of the inner room was thrown open, and Humphreys entered first, calling out with a loud voice, "the President of the United States." The President was so much disconcerted with it, that he did not recover from it the whole time of the levee, and when the company was gone, he said to Humphreys, "Well, you have taken me in once, but by God you shall never take me in a second time."

There is reason to believe that the rejection of the late additional Assumption by the Senate, was effected by the President through Lear, operating on Langdon. Beckley knows this.

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February the 20th, 1793. Colonel W. S. Smith called on me to communicate intelligence from France. He had left Paris November the 9th. He said the French ministers are entirely broken with Gouverneur Morris; shut their doors to him, and will never receive another communication from him. They wished Smith to be the bearer of a message from the President, to this effect, but he declined; and they said in that case they would press it through their own Minister here. He said they are sending Genet here with full powers to give us all the privileges we can desire in their countries, and particularly in the West Indies; that they even contemplate to set them free the next summer;

that they propose to emancipate South America, and will send forty-five ships of the line there next spring, and Miranda at the head of the expedition; that they desire our debt to be paid them in provisions, and have authorized him to negotiate this. In confirmation of this, he delivers a letter to the President from Le Brun, Minister for Foreign Affairs, in which Le Brun says that Colonel Smith will communicate plans worthy of his (the President's) great mind, and he shall be happy to receive his opinion as to the means the most suitable to effect it.

I had, five or six days ago, received from Ternant, extracts from the lives of his Ministers, complaining of both Gouverneur Morris and Mr. Short. I sent them this day to the President with an extract from a private letter of Mr. Short, justifying himself, and I called this evening on the President. He said he considered the extracts from Ternant very serious—in short, as decisive; that he saw that Gouverneur Morris could be no longer continued there consistent with the public good; that the moment was critical in our favor, and ought not to be lost; that he was extremely at a loss what arrangement to make. I asked him whether Gouverneur Morris and Pinckney might not change places. He said that would be a sort of remedy, but not a radical one. That if the French Ministry conceived Gouverneur Morris to be hostile to them; if they would be jealous merely on his proposing to visit London, they would never be satisfied with us at

placing him at London permanently. He then observed, that though I had unfixed the day on which I had intended to resign, yet I appeared fixed in doing it at no great distance of time; that in this case, he could not but wish that I would go to Paris; that the moment was important: I possessed the confidence of both sides, and might do great good; that he wished I could do it, were it only to stay there a year or two. I told him that my mind was so bent on retirement that I could not think of launching forth again in a new business; that I could never again cross the Atlantic; and that as to the opportunity of doing good, this was likely to be the scene of action, as Genet was bringing powers to do the business here; but that I could not think of going abroad. He replied that I had pressed him to continue in the public service, and refused to do the same myself. I said the case was very different; he united the confidence of all America, and was the only person who did so: his services therefore were of the last importance; but for myself, my going out would not be noted or known. A thousand others could supply my place to equal advantage, therefore I felt myself free; and that as to the mission to France, I thought perfectly proper. He desired me then to consider maturely what arrangement should be made.

Smith, in speaking of Morris, said, that at his own table, in presence of his company and servants, he cursed the French Ministers, as a set of damned

rascals; said the King would still be replaced upon his throne. He said he knew they had written to have him recalled, and expected to be recalled. He consulted Smith to know whether he would bring his furniture here duty free. Smith has mentioned the situation of Gouverneur Morris freely to others here. Smith said also that the Ministers told him they meant to begin their attack at the mouth of the Mississippi, and to sweep along the Bay of Mexico southwardly, and that they would have no objection to our incorporating into our Government the two Floridas.

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February the 25th, 1793. The President desires the opinions of the Heads of the three Departments, and of the Attorney General, on the following question, to wit: Mr. Ternant having applied for money equivalent to three millions of livres, to be furnished on account of our debt to France at the request of the Executive of that country, which sum is to be laid out in provisions within the United States, to be sent to France. Shall the money be furnished?

The Secretary of the Treasury stated it as his opinion, that making a liberal allowance for the depreciation of assignats, (no rule of liquidation having been yet fixed,) a sum of about three hundred and eighteen thousand dollars may not exceed the arrearages equitably due to France to the end of 1792, and that the whole sum asked for may be furnished within periods capable of answering the

purpose of Mr. Ternant's application, without a derangement of the Treasury.

Whereupon the Secretaries of State and War, and the Attorney General, are of opinion that the whole sum asked for by Mr. Ternant ought to be furnished: the Secretary of the Treasury is of opinion that the supply ought not exceed the above-mentioned sum of three hundred and eighteen thousand dollars.

The President having required the attendance of the Heads of the three Departments, and of the Attorney General, at his house, on Monday the 25th of February, 1793, the following questions were proposed, and answers given:

1. The Governor of Canada having refused to let us obtain provisions from that province, or to pass them along the water communication to the place of treaty with the Indians; and the Indians having refused to let them pass peaceably along what they call the bloody path, the Governor of Canada at the same time proposing to furnish the whole provisions necessary, ought the treaty to proceed? Answer unanimously, it ought to proceed.

2. Have the Executive, or the Executive and Senate together, authority to relinquish to the Indians the right of soil of any part of the land north of the Ohio, which has been validly obtained by former treaties?

The Secretary of the Treasury, the Secretary of War, and Attorney General, are of opinion that the Executive and Senate have such authority, provided

that no grants to individuals, nor reservations to States, be thereby infringed. The Secretary of State is of opinion they have no such authority to relinquish.

3. Will it be expedient to make any such relinquishments to the Indians, if essential to peace?

The Secretaries of the Treasury and War, and the Attorney General, are of opinion it will be expedient to make such relinquishments if essential to peace, provided it do not include any lands sold or received for special purposes (the reservations for trading places excepted). The Secretary of State is of opinion that the Executive and Senate have authority to stipulate with the Indians, and that if essential to peace, it will be expedient to stipulate that we will not settle any lands between those already sold, or reserved for special purposes, and the lines heretofore validly established with the Indians.

Whether the Senate shall be previously consulted on this point. The opinion unanimously is, that it will be better not to consult them previously.

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February the 26th, 1793. Notes on the proceedings of yesterday. [See the formal opinions given to the President in writing, and signed.]

First question. We are all of opinion that the treaty should proceed merely to gratify the public opinion, and not from an expectation of success. I expressed myself strongly, that the event was so

unpromising, that I thought the preparations for a campaign should go on without the least relaxation, and that a day should be fixed with the commissioners for the treaty, beyond which they should not permit the treaty to be protracted, by which day orders should be given for our forces to enter into action. The President took up the thing instantly, after I had said this, and declared that he was so much of the opinion that the treaty would end in nothing, that he then, in the presence of us all, gave orders to General Knox, not to slacken the preparations for the campaign in the least, but to exert every nerve in preparing for it. Knox said something about the ultimate day for continuing the negotiations. I acknowledged myself not a judge on what day the campaign should begin, but that whatever it was, that day should terminate the treaty. Knox said he thought a winter campaign was always the most efficacious against the Indians. I was of opinion, since Great Britain insisted on furnishing provisions, that we should offer to repay. Hamilton thought we should not.

Second question. I considered our right of preemption of the Indian lands, not as amounting to any dominion, or jurisdiction, or paramountship whatever, but merely in the nature of a remainder after the extinguishment of a present right, which gave us no present right whatever, but of preventing other nations from taking possession, and so defeating our expectancy; that the Indians had the full,

undivided and independent sovereignty as long as they choose to keep it, and that this might be forever; that as fast as we extend our rights by purchase from them, so fast we extend the limits of our society, and as soon as a new portion became encircled within our line, it became a fixed limit of our society; that the Executive, with either or both branches of the legislature, could not alien any part of our territory; that by the law of nations it was settled, that the unity and indivisibility of the society was so fundamental, that it could not be dismembered by the constituted authorities, except, 1, where *all power* was delegated to them (as in the case of despotic governments), or, 2, where it was expressly delegated; that neither of these delegations had been made to our general Government, and therefore, that it had no right to dismember or alienate any portion of territory once ultimately consolidated with us; and that we could no more cede to the Indians than to the English or Spaniards, as it might, according to acknowledged principles, remain as irrevocably and eternally with the one as the other. But I thought, that as we had a right to sell and settle lands once comprehended within our lines, so we might forbear to exercise that right, retaining the property till circumstances should be more favorable to the settlement, and this I agreed to do in the present instance, if necessary for peace.

Hamilton agreed to the doctrine of the law of nations, as laid down in Europe, but that it was

founded on the universality of settlement there; consequently, that no lopping off of territory could be made without a lopping off of citizens, which required their consent; but that the law of nations for us must be adapted to the circumstance of our unsettled country, which he conceived the President and Senate may cede; that the power of treaty was given to them by the Constitution, without restraining it to particular objects; consequently, that it was given in as plenipotentiary a form as held by any sovereign in any other society. Randolph was of opinion there was a difference between a cession to Indians and to any others, because it only restored the ceded part to the condition in which it was before we bought it, and consequently, that we might buy it again hereafter; therefore, he thought the Executive and Senate could cede it. Knox joined in the main opinion. The President discovered no opinion, but he made some efforts to get us to join in some terms which could unite us all, and he seemed to direct those efforts more towards me; but the thing could not be done.

Third question. We agreed in idea as to the line to be drawn, to wit, so as to retain all lands appropriated, or granted, or reserved.

Fourth question. We all thought if the Senate should be consulted, and consequently apprized of our line, it would become known to Hammond, and we should lose all chance of saving anything more at the treaty than our ultimatum.

The President, at this meeting, mentioned the declaration of some person, in a paper of Fenno, that he would commence an attack on the character of Dr. Franklin. He said the theme was to him excessively disagreeable on other considerations, but most particularly so, as the party seemed to do it as a means of defending him (the President) against the late attacks on him; that such a mode of defence would be peculiarly painful to him, and he wished it could be stopped. Hamilton and Randolph undertook to speak to Fenno to suppress it, without mentioning it as the President's wish. Both observed that they had heard this declaration mentioned in many companies, and that it had excited universal horror and detestation.

The paper in Fenno must lie between two persons, viz., Adams and Izard, because they are the only persons who could know such facts as are there promised to be unfolded. Adams is an enemy to both characters, and might choose this ground as an effectual position to injure both. Izard hated Franklin with unparalleled bitterness, but humbly adores the President, because he is in *loco regis*. If the paper proceeds, we shall easily discover which of these two gentlemen is the champion. In the meantime, the first paper leads our suspicions more towards Izard than Adams, from the circumstance of style, and because he is quite booby enough not to see the injury he would do to the President by such a mode of defence.

lutions were proposed, and nothing spared to present them in the fulness of demonstration. There were not more than three or four who voted otherwise than had been expected.

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March the 30th, 1793. At our meeting at the President's, February the 25th, in discussing the question, whether we should furnish to France the three millions of livres desired, Hamilton, in speaking on the subject, used this expression, "When Mr. Genet arrives, whether we shall receive him or not, will then be a question for discussion," which expression I did not recollect till E. Randolph reminded me of it a few days after. Therefore, on the 20th instant, as the President was shortly to set out for Mount Vernon, I observed to him, that as Genet might arrive in his absence, I wished to know beforehand how I should treat him, whether as a person who would or would not be received? He said he could see no ground of doubt but that he ought to be received. On the 24th he asked E. Randolph's opinion on the subject, saying he had consulted Colonel Hamilton thereon, who went into lengthy considerations of doubt and difficulty, and viewing it as a very unfortunate thing that the President should have the decision of so critical a point forced on him; but, in conclusion, said, since he was brought into that situation, he did not see but that he must receive Mr. Genet. Randolph told the President

he was clear he should be received, and the President said he had never had any doubt on the subject in his mind. Afterwards, on the same day, he spoke to me again on it, and said Mr. Genet should unquestionably be received; but he thought not with too much warmth or cordiality, so only as to be satisfactory to him. I wondered at first at this restriction; but when Randolph afterwards communicated to me his conversation of the 24th, I became satisfied it was a small sacrifice to the opinion of Hamilton.

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March the 31st. Mr. Beckley tells me, that the merchants' bonds for duties on six months' credit became due the 1st instant to a very great amount, that Hamilton went to the bank on that day, and directed the bank to discount for those merchants all their bonds at thirty days, and that he would have the collectors credited for the money at the Treasury. Hence, the Treasury lumping its receipts by the month in its printed accounts, these sums will be considered by the public as only received on the last day; consequently, the bank makes the month's interest out of it. Beckley had this from a merchant who had a bond discounted, and supposes a million of dollars were discounted at the bank here. Mr. Brown got the same information from another merchant, who supposed only six hundred thousand dollars discounted here. But they suppose the same orders went to all the branch banks to a great amount.

*Eodem die.* Mr. Brown tells me he has it from a merchant, that during the last winter the directors of the bank ordered the freest discounts. Every man could obtain it. Money being so flush, the six per cents run up to twenty-one and twenty-two shillings. Then the directors sold out their private stocks. When the discounted notes were becoming due, they stopped discounts, and not a dollar was to be had. This reduced six per cents to eighteen shillings and three pence; then the same directors bought in again.

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April the 7th, 1793. Mr. Lear called on me, and introduced of himself a conversation on the affairs of the United States. He laughed at the cry of prosperity, and the deriving it from the establishment of the Treasury: he said, that so far from giving into this opinion, and that we were paying off our national debt, he was clear the debt was growing on us; that he had lately expressed this opinion to the President, who appeared much astonished at it. I told him I had given the same hint to the President last summer, and lately again had suggested, that we were even depending for the daily subsistence of Government on borrowed money. He said, that was certain, and was the only way of accounting for what was become of the money drawn over from Holland to this country. He regretted that the President was not in the way of hearing full information,

declared he communicated to him everything he could learn himself; that the men who vaunted the present Government so much on some occasions, were the very men who at other times declared it was a poor thing, and such a one as could not stand, and he was sensible they only esteemed it as a stepping stone to something else, and had availed themselves of the first moments of the enthusiasm in favor of it, to pervert its principles and make of it what they wanted; and that though they raised the cry of anti-federalism against those who censured the mode of administration, yet he was satisfied, whenever it should come to be tried, that the very men whom they called anti-federalists, were the men who would save the Government, and he looked to the next Congress for much rectification.

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April the 18th. The President sends a set of questions to be considered, and calls a meeting. Though those sent me were in his own hand writing, yet it was palpable from the style, their ingenious tissue and suite, that they were not the President's, that they were raised upon a prepared chain of argument, in short, that the language was Hamilton's, and the doubts his alone. They led to a declaration of the Executive, that our treaty with France is void. E. Randolph, the next day, told me that the day before the date of these questions, Hamilton went with him through the whole chain of

reasoning of which these questions are the skeleton, and that he recognized them the moment he saw them.

We met. The first question, whether we should receive the French minister, Genet, was proposed, and we agreed unanimously that he should be received; Hamilton, at the same time, expressing his great regret that any incident had happened, which should oblige us to recognize the government. The next question was, whether he should be received absolutely, or with qualifications. Here Hamilton took up the whole subject, and went through it in the order in which the questions sketch it. See the chain of his reasoning in my opinions of April the 28th. Knox subscribed at once to Hamilton's opinion that we ought to declare the treaty void, acknowledging, at the same time, like a fool as he is, that he knew nothing about it. I was clear it remained valid. Randolph declared himself of the same opinion, but on Hamilton's undertaking to present to him the authority in Vattel (which we had not present) and to prove to him, that if the authority was admitted, the treaty might be declared void, Randolph agreed to take further time to consider. It was adjourned. We determined, unanimously, the last question, that Congress should not be called. There having been an intimation by Randolph, that in so great a question he should choose to give a written opinion, and this being approved by the President, I gave in mine April

the 28th. Hamilton gave in his. I believe Knox's was never thought worth offering or asking for. Randolph gave his May the 6th, concurring with mine. The President told me, the same day, he had never had a doubt about the validity of the treaty; but that since a question had been suggested, he thought it ought to be considered; that this being done, I might now issue passports to sea vessels in the form prescribed by the French treaty. I had for a week past only issued the Dutch form; to have issued the French, would have been presupposing the treaty to be in existence. The President suggested, that he thought it would be as well that nothing should be said of such a question having been under consideration.

Written May the 6th.

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May the 6th, 1793. When the question was, whether the proclamation of April the 22d should be issued, Randolph observed, that there should be a letter written by me to the Ministers of the belligerent powers, to declare that it should not be taken as conclusive evidence against our citizens in foreign courts of admiralty, for contraband goods. Knox suddenly adopted the opinion, before Hamilton delivered his. Hamilton opposed it pretty strongly. I thought it an indifferent thing, but rather approved Randolph's opinion. The President was against it; but observed that *as there were three*

*for it, it should go.* This was the first instance I had seen of an opportunity to decide by a mere majority, including his own vote.

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May the 12th. Lear called on me to-day. Speaking of the lowness of stocks, (sixteen shillings,) I observed it was a pity we had not money to buy on public account. He said, yes, and that it was the more provoking, as two millions had been borrowed for that purpose, and drawn over here, and yet were not here. That he had no doubt those would take notice of the circumstance whose duty it was to do so. I suppose he must mean the President.

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May the 23d. I had sent to the President yesterday, draughts of a letter from him to the Provisory Executive Council of France, and of one from myself to Mr. Ternant, both on the occasion of his recall. I called on him to-day. He said there was an expression in one of them, which he had never before seen in any of our public communications, to wit, "our republic." The letter prepared for him to the Council, began thus: "The Citizen Ternant has delivered to me the letter wherein you inform me, that yielding, &c., you had determined to recall him from his mission, as your Minister Plenipotentiary to *our republic*." He had underscored the words, *our republic*. He said that certainly ours was a republican government, but yet we had not used

that style in this way; that if any body wanted to change its form into a monarchy, he was sure it was only a few individuals, and that no man in the United States would set his face against it more than himself; but that this was not what he was afraid of; his fears were from another quarter; that there was more danger of anarchy being introduced. He adverted to a piece in Freneau's paper of yesterday; he said he despised all their attacks on him personally, but that there never had been an act of the Government, not meaning in the executive line only, but in any line, which that paper had not abused. He had also marked the word republic thus √, where it was applied to the French republic. (See the original paper.) He was evidently sore and warm, and I took his intention to be, that I should interpose in some way with Freneau, perhaps withdraw his appointment of translating clerk to my office. But I will not do it. His paper has saved our Constitution, which was galloping fast into monarchy, and has been checked by no one means so powerfully as by that paper. It is well and universally known, that it has been that paper which has checked the career of the monocrats; and the President, not sensible of the designs of the party, has not with his usual good sense and *sang froid*, looked on the efforts and effects of this free press, and seen that, though some bad things have passed through it to the public, yet the good have preponderated immensely.

June the 7th, 1793. Mr. Beckley, who has returned from New York within a few days, tells me that while he was there, Sir John Temple, Consul General of the northern States for Great Britain, showed him a letter from Sir Gregory Page Turner, a member of Parliament for a borough in Yorkshire, who, he said, had been a member for twenty-five years, and always confidential for the Ministers, in which he permitted him to read particular passages of the following purport: "that the Government was well apprized of the predominancy of the British interest in the United States; that they considered Colonel Hamilton, Mr. King, and Mr. W. Smith of South Carolina, as the main supports of that interest; that particularly, they considered Colonel Hamilton, and not Mr. Hammond, as their effective Minister here; that if the anti-federal interest (that was his term), at the head of which they considered Mr. Jefferson to be, should prevail, these gentlemen *had secured* an asylum to themselves in England." Beckley could not understand whether they had secured it *themselves*,[1] or whether they were only notified that it was secured to them. So that they understand that they may go on boldly in their machinations to change the Government, and if they should be overset and choose to withdraw, they will be secure of a pension in England, as Arnold, Deane, &c., had. Sir John read passages of a letter (which

[1 In the margin is written, by Mr. Jefferson, "Impossible as to Hamilton; he was far above that."]

he did not put into Beckley's hand, as he did the other) from Lord Grenville, saying nearly the same things. This letter mentions to Sir John, that though they had divided the Consul Generalship, and given the southern department to Bond, yet he, Sir John, was to retain his whole salary. [By this it would seem, as if, wanting to use Bond, they had covered his employment with this cloak.] Mr. Beckley says that Sir John Temple is a strong republican. I had a proof of his intimacy with Sir John in this circumstance. Sir John received his new commission of Consul for the northern department, and instead of sending it through Mr. Hammond, got Beckley to enclose it to me for his exequatur. I wrote to Sir John that it must come through Mr. Hammond, enclosing it back to him. He accordingly then sent it to Mr. Hammond.

In conversation with the President to-day, and speaking about General Greene, he said that he and General Greene had always differed in opinion about the manner of using militia. Greene always placed them in his front: himself was of opinion, they should always be used as a reserve to improve any advantage, for which purpose they were the *finest fellows* in the world. He said he was on the ground of the battle of Guilford, with a person who was in the action, and who explained the whole of it to him. That General Greene's front was behind a fence at the edge of a large field, through which the enemy were obliged to pass to get at them; and that in

their passage through this, they must have been torn all to pieces, if troops had been posted there who would have stood their ground; and that the retreat from that position was through a thicket, perfectly secure. Instead of this, he posted the North Carolina militia there, who only gave one fire and fell back, so that the whole benefit of their position was lost. He thinks that the regulars, with their field pieces, would have hardly let a single man get through that field.

*Eodem die* (June the 7th). Beckley tells me that he has the following fact from Governor Clinton. That before the proposition for the present General Government, *i. e.* a little before Hamilton conceived a plan for establishing a monarchial government in the United States, he wrote a draught of a circular letter, which was to be sent to about ——— persons, to bring it about. One of these letters, in Hamilton's handwriting, is now in possession of an old militia General up the North River, who, at that time, was thought *orthodox* enough to be entrusted in the execution. This General has given notice to Governor Clinton that he has this paper, and that he will deliver it into his hands, and no one's else. Clinton intends, the first interval of leisure, to go for it, and he will bring it to Philadelphia. Beckley is a man of perfect truth as to what he affirms of his own knowledge, but too credulous as to what he hears from others.

June the 10th, 1793. Mr. Brown gives me the following specimen of the phrenzy which prevailed at New York on the opening of the new Government. The first public ball which took place after the President's arrival there, Colonel Humphreys, Colonel W. S. Smith and Mrs. Knox were to arrange the ceremonials. These arrangements were as follows: a sofa at the head of the room, raised on several steps, whereon the President and Mrs. Washington were to be seated. The gentlemen were to dance in swords. Each one, when going to dance, was to lead his partner to the foot of the sofa, make a low obeisance to the President and his lady, then go and dance, and when done, bring his partner again to the foot of the sofa for new obeisances, and then to retire to their chairs. It was to be understood, too, that gentlemen should be dressed in bags. Mrs. Knox contrived to come with the President, and to follow him and Mrs. Washington to their destination, and she had the design of forcing an invitation from the President to a seat on the sofa. She mounted up the steps after them unbidden, but unfortunately the wicked sofa was so short, that when the President and Mrs. Washington were seated, there was not room for a third person; she was obliged, therefore, to descend in the face of the company, and to sit where she could. In other respects the ceremony was conducted rigorously according to the arrangements, and the President made to pass an evening which his good sense rendered a very miserable one to him.

June the 12th. Beckley tells me that Klingham has been with him to-day, and relates to him the following fact: A certificate of the old Congress had been offered at the Treasury and refused payment, and so indorsed in red ink as usual. This certificate came to the hands of Francis, (the quondam clerk of the Treasury, who, on account of his being dipped in the infamous case of the Baron Glaubec, Hamilton had been obliged to dismiss, to save appearances, but with an assurance of all future service, and he accordingly got him established in New York). Francis wrote to Hamilton that such a ticket was offered him, but he could not buy it unless he would inform him and give him his certificate that it was good. Hamilton wrote him a most friendly letter, and sent him the certificate. He bought the paper, and came on here and got it recognized, whereby he made twenty-five hundred dollars. Klingham saw both the letter and certificate.

Irving, a clerk in the Treasury, an Irishman, is the author of the pieces now coming out under the signature of Veritas, and attacking the President. I have long suspected this detestable game was playing by the fiscal party, to place the President on their side.

### CABINET MEETINGS.

June the 17th, 1793. At a meeting of the Heads of Department at the President's this day, on summons from him, a letter from Mr. Genet of the 15th

inst. (addressed to the Secretary of State on the subject of the seizure of a vessel by the Governor of New York, as having been armed, equipped and manned in that port, with a design to cruise on the enemies of France), was read, as also the draught of an answer prepared by the Secretary of State, which was approved.

Read, also, a letter of June 14th from Mr. Hammond to the Secretary of State, desiring to know whether the French privateers, the Citizen Genet, and Sans Culottes, are to be allowed to return or send their prizes into the ports of the United States. It is the opinion that he be informed that they were required to depart to the dominions of their own sovereign, and nothing expressed as to their ulterior proceedings; and that in answer to that part which states that the Sans Culottes had increased its force in the port of Baltimore, and remained there in the avowed intention of watching the motions of a valuable ship now lying there, it be answered that we expect the speedy departure of those privateers will obviate the inconveniences apprehended, and that it will be considered whether any practical arrangements can be adopted to prevent the augmentations of the force of armed vessels.

Thomas Jefferson.
Alexander Hamilton.
Henry Knox.

June the 20th, 1793. At a meeting this day of the Heads of Department at the President's, on summons from him, a letter from Messrs. Viar and Jaudines, dated June 18th, and addressed to the Secretary of State, was read; whereupon it is the opinion that a full detail of the proceedings of the United States with respect to the southern Indians and the Spaniards be prepared, and a justification as to the particular matters charged in the said letter; that this be sent, with all the necessary documents, to our Commissioners at the court of Madrid, leaving to them a discretion to change expressions in it which to them may appear likely to give offence in the circumstances under which they may be at the time of receiving it; and that a copy be sent to Mr. Pinckney for his information, and to make such use of the matter it contains as to him should seem expedient; that an answer be written to Messrs. Viar and Jaudines informing them that we shall convey our sentiments on the subject to their court through our commissioners at Madrid, and letting them see that we are not insensible to the style and manner of their communications.

A draught of a letter from the Secretary of State to Mr. Hammond, asking when an answer to his letter of May 29th, 1792, might be expected, was read and approved.

THOMAS JEFFERSON.
ALEXANDER HAMILTON.
HENRY KNOX.

July the 5th, 1793. A meeting desired by Alexander Hamilton at my office. Himself, Knox, and myself met accordingly. He said that according to what had been agreed on in presence of the President, in consequence of Mr. Genet's declining to pay the $45,000 at his command in the treasury, to the holders of the St. Domingo bills, we had agreed to pay the holders out of other moneys to that amount; that he found, however, that these bills would amount to $90,000, and the question was whether he should assume $90,000 to be paid out of the September instalment. This, he said, would enable holders to get discounts at the banks, would therefore be equal to ready money, and save them from bankruptcy. Unanimously agreed to. We also agreed to a letter written by General Knox to Governor Mifflin, to have a particular inquiry made whether the Little Sarah is arming, &c., or not. I read also Governor Lee's letter about the Governor of South Carolina's proclamation respecting pestilential disease in West Indies. We are all of opinion the evidence is too slight for interference, and doubt the power to interfere. Therefore let it lie.

Mr. Genet called on me, and read to me very rapidly instructions he had prepared for Michaud, who is going to Kentucky; an address to the inhabitants of Louisiana, and another to those of Canada. In these papers it appears that, besides encouraging those inhabitants to insurrection, he speaks of two generals in Kentucky who have proposed to him

to go and take New Orleans, if he will furnish the expense, about £3,000 sterling. He declines advancing it, but promises that sum ultimately for their expenses; proposes that officers shall be commissioned by himself in Kentucky and Louisiana; that they shall rendezvous *out of the territories of the United States*, suppose in Louisiana, and there making up a battalion to be called the —— ——— of inhabitants of Louisiana and Kentucky, and getting what Indians they could, to undertake the expedition against New Orleans, and then Louisiana to be established into an independent State, connected in commerce with France and the United States; that two frigates shall go into the river Mississippi, and co-operate against New Orleans. The address to Canada was to encourage them to shake off English yoke, to call Indians to their assistance, and to assure them of the friendly dispositions of their neighbors of the United States.

He said he communicated these things to me, not as Secretary of State, but as Mr. Jefferson. I told him that his enticing officers and soldiers from Kentucky to go against Spain, was really putting a halter about their necks; for that they would assuredly be hung if they commenced hostilities against a nation at peace with the United States. That leaving out that article I did not care what insurrections should be excited in Louisiana. He had about a fortnight ago sent me a communication for Michaud as consul of France at Kentucky, and desired an Exequatur.

I told him this could not be given, that it was only in the *ports* of the United States they were entitled to consuls, and that if France should have a consul at Kentucky, England and Spain would soon demand the same, and we should have all our interior country filled with foreign agents. He acquiesced, and asked me to return the commission and his note, which I did; but he desired I would give Michaud a letter of introduction for Governor Shelby. I sent him one a day or two after. He now observes to me that in that letter I speak of him only as a person of botanical and natural pursuits, but that he wished the Governor to view him as something more; as a French citizen possessing his confidence. I took back the letter and wrote another.

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### MEMORANDUM OF A MEETING AT THE STATE HOUSE, PHILADELPHIA, RELATIVE TO THE CASE OF THE LITTLE SARAH.

July the 8th, 1793. At a meeting at the State House of the City of Philadelphia,

Present: the Secretary of State, the Secretary of the Treasury, the Secretary of War.

It appears that a brigantine, called the Little Sarah, has been fitted out at the port of Philadelphia, with fourteen cannon and all other equipment, indicating that she is intended to cruise under the authority of France, and that she is now lying in the river Delaware, at some place between this city

and Mud Island; that a conversation has been had between the Secretary of State and the Minister Plenipotentiary of France, in which conversation the Minister refused to give any explicit assurance that the brigantine would continue until the arrival of the President, and his decision in the case, but made declarations respecting her not being ready to sail within the time of the expected return of the President, from which the Secretary of State infers with confidence, that she will not sail till the President will have an opportunity of considering and determining the case; that in the course of the conversation, the Minister declared that the additional guns which had been taken in by the Little Sarah were French property, but the Governor of Pennsylvania declared that he has good ground to believe that two of her cannon were purchased here of citizens of Philadelphia.

The Governor of Pennsylvania asks advice what steps, under the circumstances, he shall pursue?

The Secretary of the Treasury and the Secretary of War are of opinion, that it is expedient that immediate measures should be taken provisionally for establishing a battery on Mud Island, under cover of a party of militia, with direction that if the brig Sarah should attempt to depart before the pleasure of the President shall be known concerning her, military coercion be employed to arrest and prevent her progress.

The Secretary of State dissents from this opinion.

REASONS FOR SECRETARY OF STATE'S DISSENT.

I am against the preceding opinion of the Secretaries of the Treasury and War, for ordering a battery to be erected on Mud Island, and firing on the Little Sarah, an armed vessel of the Republic of France:

Because I am satisfied, from what passed between Mr. Genet and myself at our personal interview yesterday, that the vessel will not be ordered to sail till the return of the President, which, by a letter of this day's post, we may certainly expect within eight and forty hours from this time.

Because the erecting a battery and mounting guns to prevent her passage might cause a departure not now intended, and produce the fact it is meant to prevent.

Because were such battery and guns now in readiness and to fire on her, in the present ardent state of her crew just in the moment of leaving port, it is morally certain that bloody consequences would follow. No one could say how many lives would be lost on both sides, and all experience has shown that blood once seriously spilled between nation and nation, the contest is continued by subordinate agents, and the door of peace is shut. At this moment, too, we expect in the river twenty of their ships of war, with a fleet of from one hundred to one hundred and fifty of their private vessels, which will arrive at the scene of blood in time to continue it, if not to partake in it.

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Because the actual commencement of hostilities against a nation, for such this act may be, is an act of too serious consequence to our countrymen to be brought on their heads by subordinate officers, not chosen by them nor clothed with their confidence; and too presumptuous on the part of those officers, when the chief magistrate, into whose hands the citizens have committed their safety, is within eight and forty hours of his arrival here, and may have an opportunity of judging for himself and them, whether the buying and carrying away two cannon, (for according to information, the rest are the nation's own property,) is sufficient cause of war between Americans and Frenchmen.

Because, should the vessel, contrary to expectation, depart before the President's arrival, the adverse powers may be told the truth of the case: that she went off contrary to what we had a right to expect; that we shall be justifiable in future cases to measure our confidence accordingly; that for the present we shall demand satisfaction from France, which, with the proof of good faith we have already given, ought to satisfy them. Above all, Great Britain ought not to complain: for, since the date of the order forbidding that any of the belligerent powers should equip themselves in our ports with our arms, these two cannon are all that have escaped the vigilance of our officers on the part of their enemies, while their vessels have carried off more than ten times the number, without any

impediment; and if the suggestion be true (and as yet it is but suggestion) that there are fifteen or twenty Americans on board the Little Sarah, who have gone with their own consent, it is equally true that more than ten times that number of Americans are at this moment on board English ships of war, who have been taken forcibly from our merchant vessels at sea or in port, wherever met with, and compelled to bear arms against the friends of their country. And is it less a breach of our neutrality towards France to suffer England to strengthen herself with our force, than towards England to suffer France to do so? And are we equally ready and disposed to sink the British vessels in our ports by way of reprisal for this notorious and avowed practice?

Because it is inconsistent for a nation which has been patiently bearing for ten years the grossest insults and injuries from their late enemies, to rise at a feather against their friends and benefactors; and that, too, in a moment when circumstances have kindled the most ardent affections of the two people towards each other; when the little subjects of displeasure which have arisen are the acts of a particular individual, not yet important enough to have been carried to his government as causes of complaint; are such as nations of moderation and justice settle by negotiation, not making war their first step; are such as that government would correct at a word, if we may judge from the late unequivocal

demonstrations of their friendship towards us; and are very slight shades of the acts committed against us by England, which we have been endeavoring to rectify by negotiation, and on which they have never condescended to give any answer to our Minister.

Because I would not gratify the combination of kings with the spectacle of the two only republics on earth destroying each other for two cannon; nor would I, for infinitely greater cause, add this country to that combination, turn the scale of contest, and let it be from our hands that the hopes of man received their last stab.

It has been observed that a general order has been already given to stop by force vessels arming contrary to rule in our ports, in which I concurred. I did so because it was highly presumable that the destination of such a vessel would be discovered in some early stage, when there would be few persons on board, these not yet disposed nor prepared to resist, and a small party of militia put aboard would stop the procedure without a marked infraction of the peace. But it is a much more serious thing when a vessel has her full complement of men, (here said to be one hundred and twenty,) with every preparation and probably with disposition to go through with their enterprise. A serious engagement is then a certain consequence. Besides, an act of force, committed by an officer in a distant port, under general orders, given long ago, to take

effect on all cases, and with less latitude of discretion in him, would be a much more negotiable case than a recent order, given by the general Government itself (for that is the character we are to assume) on the spot, in the very moment, pointed at this special case, professing full discretion and not using it. This would be a stubborn transaction, not admitting those justifications and explanations which might avert a war, or admitting such only as would be entirely humiliating to the officers giving the order, and to the Government itself.

On the whole, respect to the chief magistrate, respect to our countrymen, their lives, interests, and affection, respect to a most friendly nation, who, if we give them the opportunity, will answer our wrongs by correcting and not by repeating them; respect to the most sacred cause that ever man was engaged in, poising maturely the evils which may flow from the commitment of an act which it would be in the power and probably in the temper of subordinate agents to make an act of continued war, and those which may flow from an eight and forty hours suspension of the act, are motives with me for suspending it eight and forty hours, even should we thereby lose the opportunity of committing it altogether.

COPY OF A MINUTE GIVEN TO THE PRESIDENT.

July the 12th, 1793. At a meeting of the Heads of the Departments at the President's, on summons from him, and on consideration of various representations from the Minister Plenipotentiary of France and Great Britain, on the subject of vessels arming and arriving in our ports, and of prizes;—it is their opinion that letters be written to the said ministers, informing them that the Executive of the United States is desirous of having done what shall be strictly conformable to the treaties of the United States; and the laws respecting the said cases has determined to refer the questions arising therein to persons learned in the laws; that as this reference will occasion some delay, it is expected that, in the meantime, the Little Sarah, or Little Democrat, the ship Jane, and the ship William, in the Delaware, the Citoyen Genet and her prizes, the brigs Lovely-Lass and Prince William Henry, and the brig in the Chesapeake, do not depart till the further order of the President.

That letters be addressed to the Judges of the Supreme Court of the United States, requesting their attendance at this place on Thursday the 18th instant, to give their advice on certain matters of public concern, which will be referred to them by the President.

That the Governor be desired to have the ship Jane attended to with vigilance, and if she be found

augmenting her force and about to depart, that he cause her to be stopped.

THOMAS JEFFERSON.
ALEXANDER HAMILTON.
HENRY KNOX.

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A RECAPITULATION OF QUESTIONS WHEREUPON CABINET MEMBERS HAVE GIVEN OPINIONS.

Does the treaty with France leave us free to prohibit her from arming vessels in our ports? Thomas Jefferson, Hamilton, Knox, and Randolph—unanimous—it does. As the treaty obliges us to prohibit the enemies of France from arming in our ports, and leaves us free to prohibit France, do not the laws of neutrality oblige us to prohibit her? Same persons answer they do.

How far may a prohibition now declared be retrospective to the vessels armed in Charleston before the prohibition, to wit, the Citoyen Genet and Sans Culottes, and what is to be done with these prizes? Thomas Jefferson,—It cannot be retrospective at all; they may sell their prizes, and continue to act freely as other armed vessels of France. Hamilton and Knox,—The prizes ought to be given up to the English, and the privateers suppressed. Randolph, —They are free to sell their prizes, and the privateers should be ordered away, not to return here till they shall have been to the dominions of their own sovereign, and thereby purged the illegality of their

origin. This last opinion was adopted by the President.

Our citizens who have joined in these hostilities against nations at peace with the United States, are they punishable? E. Randolph gave an official opinion—they were. Thomas Jefferson, Hamilton and Knox joined in the opinion. All thought it our duty to have prosecutions instituted against them, that the laws might pronounce on their case. In the first instance, two only were prosecuted merely to try the question, and to satisfy the complaint of the British men; and because it was thought they might have offended unwittingly. But a subsequent armament of a vessel at New York taking place with full knowledge of this prosecution, all the persons engaged in it, citizens and foreigners, were ordered to be prosecuted.

May the prohibition extend to the means of the party arming, or are they only prohibited from using our means for the annoyance of their enemies? Thomas Jefferson of opinion they are free to use their own means, *i. e.*, to mount their own guns, &c. Hamilton and Knox of opinion they are not to put even their own implements or means into a posture of annoyance. The President has as yet not decided this.

May an armed vessel arriving here be prohibited to employ their own citizens found here as seamen or mariners? Thomas Jefferson,—They cannot be prohibited to recruit their own citizens. Hamilton

and Knox,—They may and ought to be prohibited. No decision yet by the President.

It appears to me the President wished the Little Sarah had been stopped by military coercion, that is, by firing on her; yet I do not believe he would have ordered it himself had he been here, though he would be glad if we had ordered it. The United States being a ship-building nation, may they sell ships, prepared for war, to both parties? Thomas Jefferson,—They may sell such ships in their ports to both parties, or carry them for sale to the dominions of both parties. E. Randolph of opinion they could not sell them here; and that if they attempted to carry them to the dominions of the parties for sale, they might be seized by the way as *contraband*. Hamilton of same opinion, except that he did not consider them as seizable for contraband, but as the property of a power, making itself a party in the *war* by an aid of such a nature, and consequently that it would be a breach of neutrality.

Hamilton moves that the Government of France be desired to recall Mr. Genet. Knox adds that he be in the meantime suspended from his functions. Thomas Jefferson proposes that his correspondence be communicated to his Government, with friendly observations. President silent.

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July the 15th. Thomas Jefferson, Hamilton and Knox met at the President's. Governor Mifflin had

applied to Knox for the loan of four cannon to mount at Mud Island. He informed him he should station a guard of thirty-five militia there, and asked what arrangement for rations the general Government had taken. Knox told him nothing could be done as to rations, and he would ask the President for the cannon. In the meantime, he promised him to put the cannon on board a boat, ready to send off as soon as permission was obtained. The President declared his own opinion *first* and fully, that when the orders were given to the Government to stop vessels arming, &c., in our ports, even by military force, he took for granted the Government would use such diligence as to stop those projects in embryo, and stop them when no force was requisite, or a very small party of militia would suffice; that here was a demand from the Government of Pennsylvania to land four cannon under pretext of executing orders of the general Government; that if this was granted, we should be immediately applied to by every other Governor, and that not for one place only, but for several, and our cannon would be dispersed all over the United States; that for this reason we would refuse the same request to the Governors of South Carolina, Virginia, and Rhode Island; that if they erected batteries, they must establish men for them, and would come on us for this, too. He did not think the Executive had a power to establish permanent guards: he had never looked to anything permanent when the orders were given to the Governors, but

only an occasional call on small parties of militia in the moments requiring it. These sentiments were so entirely my own, that I did little more than combat on the same grounds the opinions of Hamilton and Knox. The latter said he would be ready to lend an equal number to every government to carry into effect orders of such importance; and Hamilton, that he would be willing to lend them in cases where they happened to be as near the place where they were to be mounted.

Hamilton submitted the purchase of a large quantity of saltpetre, which would outrun the funds destined to objects of that class by Congress. We were unanimous we ought to venture on it, and to the procuring supplies of military stores in the present circumstances, and take on us the responsibility to Congress, before whom it should be laid.

The President was fully of the same opinion.

In the above case of the cannon, the President gave no final order while I remained; but I saw that he was so impressed with the disagreeableness of taking them out of the boat again, that he would yield. He spoke sharply to Knox for having put them in that position without consulting him, and declared that, but for that circumstance, he would not have hesitated one moment to refuse them.

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July the 18th, 1793. Lear calls on me. I told him that Irving, an Irishman, and a writer in the

Treasury, who, on a former occasion, had given the most decisive proofs of his devotion to his principal, was the author of the pieces signed Veritas; and I wished he could get at some of Irving's acquaintances and inform himself of the fact, as the person who told me of it would not permit the name of his informer to be mentioned; [*Note.*—Beckley told me of it, and he had it from Swaine, the printer to whom the pieces were delivered;] that I had long before suspected this excessive foul play in that party, of writing themselves in the character of the most exaggerated democrats, and incorporating with it a great deal of abuse on the President, to make him believe it was that party who were his enemies, and so throw him entirely into the scale of the monocrats. Lear said he no longer ago than yesterday, expressed to the President his suspicions of the artifices of that party to work on him. He mentioned the following fact as a proof of their writing in the character of their adversaries; to wit, the day after the little incident of Richet's toasting "the man of the people," (see the gazettes,) Mrs. Washington was at Mrs. Powel's, who mentioned to her that when the toast was given, there was a good deal of disapprobation appeared in the audience, and that many put on their hats and went out; on inquiry, he had not found the fact true, and yet it was put into ————'s paper, and written under the character of a republican, though he is satisfied it is altogether a slander of the monocrats. He mentioned this to the Presi-

dent, but he did not mention to him the following fact, which he knows; that in New York, the last summer, when the parties of Jay and Clinton were running so high, it was an agreed point with the former, that if any circumstances should ever bring it to a question, whether to drop Hamilton or the President, they had decided to drop the President. He said that lately one of the loudest pretended friends to the Government, damned it, and said it was good for nothing, that it could not support itself, and it was time to put it down and set up a better; and yet the same person, in speaking to the President, puffed off that party as the only friends to the Government. He said he really feared, that by their artifices and industry, they would aggravate the President so much against the republicans, as to separate him from the body of the people. I told him what the same cabals had decided to do, if the President had refused his assent to the bank bill; also what Brockhurst Livingston said to ———, that Hamilton's life was much more precious to the community than the President's.

### CABINET MEETINGS.

July the 29th, 1793. At a meeting at the President's on account of the British letter-of-marque, ship Jane, said to have put up waste boards, to have pierced two port holes, and mounted two cannon (which she brought in) on new carriages which she did not bring in, and consequently having sixteen,

instead of fourteen, guns mounted, it was agreed that a letter-of-marque, or vessel *armé en guerre*, and *en merchandise*, is not a privateer, and therefore not to be ordered out of our ports. It was agreed by Hamilton, Knox, and myself, that the case of such a vessel does not depend on the treaties, but on the law of nations. Edmund Randolph thought, as she had a mixed character of merchant vessel and privateer, she might be considered under the treaty; but this being overruled, the following paper was written:

Rules proposed by Attorney General:

1st. That all equipments purely for the accommodation of vessels, as merchantmen, be admitted. [Agreed.]

2d. That all equipments, doubtful in their nature, and applicable equally to commerce or war, be admitted, as producing too many minutia. [Agreed.]

3d. That all equipments, solely adapted to military objects, be prohibited. [Agreed.]

Rules proposed by the Secretary of the Treasury:

1st. That the original arming and equipping of vessels for military service, offensive or defensive, in the ports of the United States, be considered as prohibited to all. [Agreed.]

2d. That vessels which were armed before their coming into our ports, shall not be permitted to augment these equipments in the ports of the United States, but may repair or replace any military equipments which they had when they began their voyage for the United States; that this, however, shall be

with the exception of privateers of the parties opposed to France, who shall not refit or repair. [Negatived—the Secretary of the Treasury only holding the opinion.]

3d. That for convenience, vessels armed and commissioned before they come into our ports, may engage their own citizens, not being inhabitants of the United States. [Agreed.]

I subjoined the following:

I concur in the rules proposed by the Attorney General, as far as respects materials or means of annoyance furnished by us; and I should be for an additional rule, that as to means or materials brought into this country, and belonging to themselves, they are free to use them.

August the 1st. Met at the President's, to consider what was to be done with Mr. Genet. All his correspondence with me was read over. The following propositions were made: 1. That a full statement of Mr. Genet's conduct be made in a letter to G. Morris, and be sent with his correspondence, to be communicated to the Executive Council of France; the letter to be so prepared, as to serve for the form of communication to the Council. Agreed unanimously. 2. That in that letter his recall be required. Agreed by all, though I expressed a preference of expressing that desire with great delicacy; the others were for peremptory terms. 3. To send him off. This was proposed by Knox; but rejected by every

other. 4. To write a letter to Mr. Genet, the same in substance with that written to G. Morris, and let him know we had applied for his recall. I was against this, because I thought it would render him extremely active in his plans, and endanger confusion. But I was overruled by the other three gentlemen and the President. 5. That a publication of the whole correspondence, and statement of the proceedings, should be made by way of appeal to the people. Hamilton made a jury speech of three-quarters of an hour, as inflammatory and declamatory as if he had been speaking to a jury. E. Randolph opposed it. I chose to leave the contest between them. Adjourned to next day.

August the 2d. Met again. Hamilton spoke again three-quarters of an hour. I answered on these topics. *Object* of the appeal.—The democratic society; this the great circumstance of alarm; afraid it would extend its connections over the continent; chiefly meant for the local object of the ensuing election of Governor. If left alone, would die away after that is over. If opposed, if proscribed, would give it importance and vigor; would give it a new object, and multitudes would join it merely to assert the right of voluntary associations. That the measure was calculated to make the President assume the station of the head of a party, instead of the head of the nation. *Plan* of the appeal.—To consist of *facts* and the *decisions* of the President. As to facts we

are agreed; but as to the decisions, there have been great differences of opinion among us. Sometimes as many opinions as persons. This proves there will be ground to attack the decisions. Genet will appeal also; it will become a contest between the President and Genet—anonymous writers—will be same difference of opinion in *public*, as in our cabinet—will be same difference in *Congress*, for it must be laid before them—would, therefore, work very unpleasantly *at home*. How would it work *abroad?* France—unkind—after such proofs of her friendship, should rely on that friendship, and her justice. Why appeal to the world? Friendly nations always negotiate little differences in private. Never appeal to the world, but when they appeal to the sword. Confederacy of Pilnitz was to overthrow the Government of France. The interference of France to disturb other governments and excite insurrections, was a measure of reprisal. Yet these Princes have been able to make it believed to be the system of France. Colonel Hamilton supposes Mr. Genet's proceedings here are in pursuance of that system; and we are so to declare it to the world, and to add our testimony to this base calumny of the Princes. What a triumph to them to be backed by our testimony. What a fatal stroke at the cause of liberty; *et tu Brute*. We indispose the French Government, and they will retract their offer of the treaty of commerce. The President manifestly inclined to the appeal to the people.[1]

[1] He said that Mr. Morris, taking a family dinner with him the other day, went largely, and of his own accord, into this subject;

Knox, in a foolish incoherent sort of a speech, introduced the pasquinade lately printed, called the funeral of George W——n, and James W——n, King and Judge, &c., where the President was placed on a guillotine. The President was much inflamed; got into one of those passions when he cannot command himself; ran on much on the personal abuse which had been bestowed on him; defied any man on earth to produce one single act of his since he had been in the Government, which was not done on the purest motives; that he had never repented but once the having slipped the moment of resigning his office, and that was every moment since; that *by God* he had rather be in his grave than in his present situation; that he had rather be on his farm than to be made *Emperor of the world;* and yet that they were charging him with wanting to be a King. That that *rascal Freneau* sent him three of his papers every day, as if he thought he would become the distributor of his papers; that he could see in this, nothing but an impudent design to insult him: he ended in this high tone. There was a pause. Some difficulty in resuming our question; it was, however, after a little while, presented again, and he said there seemed to

advised this appeal, and promised, if the President adopted it, that he would support it himself, and engage for all his connections. The President repeated this twice, and with an air of importance. Now, Mr. Morris has no family connections: he engaged then for his political friends. This shows that the President has not confidence enough in the virtue and good sense of mankind, to confide in a government bottomed on them, and thinks other props necessary.

be no necessity for deciding it now; the propositions before agreed on might be put into a train of execution, and perhaps events would show whether the appeal would be necessary or not. He desired we would meet at my office the next day, to consider what should be done with the vessels armed in our ports by Mr. Genet, and their prizes.

August the 3d. We met. The President wrote to take our opinions, whether Congress should be called. Knox pronounced at once against it. Randolph was against it. Hamilton said his judgment was against it, but that if any two were for it, or against it, he would join them to make a majority. I was for it. We agreed to give separate opinions to the President. Knox said we should have had fine work, if Congress had been sitting these two last months. The fool thus let out the secret. Hamilton endeavored to patch up the indiscretion of this blabber, by saying "he did not know; he rather thought they would have strengthened the executive arm." It is evident they do not wish to lengthen the session of the *next Congress*, and probably they particularly wish it should not meet till Genet is gone. At this meeting I received a letter from Mr. Remson at New York, informing me of the event of the combat between the Ambuscade and the Boston. Knox broke out into the most unqualified abuse of Captain Courtany. Hamilton, with less fury, but with the deepest vexation, loaded him with censures.

Both showed the most unequivocal mortification at the event.

### CONFERENCE WITH PRESIDENT WASHINGTON.

August the 6th, 1793. The President calls on me at my house in the country, and introduces my letter of July the 31st, announcing that I should resign at the close of the next month. He again expressed his repentance at not having resigned himself, and how much it was increased by seeing that he was to be deserted by those on whose aid he had counted; that he did not know where he should look to find characters to fill up the offices; that mere talents did not suffice for the Department of State, but it required a person conversant in foreign affairs, perhaps acquainted with foreign courts; that without this, the best talents would be awkward and at a loss. He told me that Colonel Hamilton had three or four weeks ago written to him, informing him that private as well as public reasons had brought him to the determination to retire, and that he should do it towards the close of the next session. He said he had often before intimated dispositions to resign, but never as decisively before; that he supposed he had fixed on the latter part of next session, to give an opportunity to Congress to examine into his conduct; that our going out at times so different, increased his difficulty; for if he had both places to fill at once, he might consult both the particular talents and geographical situation of our successors.

He expressed great apprehensions at the fermentation which seemed to be working in the mind of the public; that many descriptions of persons, actuated by different causes, appeared to be uniting; what it would end in he knew not; a new Congress was to assemble, more numerous, perhaps of a different spirit; the first expressions of their sentiments would be important; if I would only stay to the end of that it would relieve him considerably.

I expressed to him my excessive repugnance to public life, the particular uneasiness of my situation in this place, where the laws of society oblige me always to move exactly in the circle which I know to bear me peculiar hatred; that is to say, the wealthy aristocrats, the merchants connected closely with England, the new created paper fortunes; that thus surrounded, my words were caught, multiplied, misconstrued, and even fabricated and spread abroad to my injury; that he saw also, that there was such an opposition of views between myself and another part of the Administration, as to render it peculiarly unpleasing, and to destroy the necessary harmony. Without knowing the views of what is called the republican party here, or having any communication with them, I could undertake to assure him, from my intimacy with that party in the late Congress, that there was not a view in the republican party as spread over the United States, which went to the frame of the Government; that I believed the next Congress would attempt nothing material, but

to render their own body independent; that that party were firm in their dispositions to support the Government; that the manœuvres of Mr. Genet might produce some little embarrassment, but that he would be abandoned by the republicans the moment they knew the nature of his conduct; and on the whole, no crisis existed which threatened anything.

He said he believed the views of the republican party were perfectly pure, but when men put a machine into motion, it is impossible for them to stop it exactly where they would choose, or to say where it will stop. That the constitution we have is an excellent one, if we can keep it where it is; that it was, indeed, supposed there was a party disposed to change it into a monarchical form, but that he could conscientiously declare there was not a man in the United States who would set his face more decidedly against it than himself. Here I interrupted him, by saying, "No rational man in the United States suspects you of any other disposition; but there does not pass a week, in which we cannot prove declarations dropping from the monarchical party that our Government is good for nothing, is a milk and water thing which cannot support itself, we must knock it down, and set up something of more energy." He said if that was the case, he thought it a proof of their insanity, for that the republican spirit of the Union was so manifest and so solid, that it was astonishing how any one could expect to move it.

He returned to the difficulty of naming my successor; he said Mr. Madison would be his first choice, but that he had always expressed to him such a decision against public office, that he could not expect he would undertake it. Mr. Jay would prefer his present office. He said that Mr. Jay had a great opinion of the talents of Mr. King; that there was also Mr. Smith of South Carolina, and E. Rutledge; but he observed, that name whom he would, some objections would be made, some would be called speculators, some one thing, some another; and he asked me to mention any characters occurring to me. I asked him if Governor Johnson of Maryland had occurred to him? He said he had; that he was a man of great good sense, an honest man, and he believed, clear of speculations; but this, said he, is an instance of what I was observing; with all these qualifications, Governor Johnson, from a want of familiarity with foreign affairs, would be in them like a fish out of water; everything would be new to him, and he awkward in everything. I confessed to him that I had considered Johnson rather as fit for the Treasury Department. Yes, said he, for that he would be the fittest appointment that could be made; he is a man acquainted with figures, and having as good a knowledge of the resources of this country as any man. I asked him if Chancellor Livingston had occurred to him? He said yes; but he was from New York, and to appoint him while Hamilton was in, and before it should be

known he was going out, would excite a newspaper conflagration, as the ultimate arrangement would not be known. He said McLurg had occurred to him as a man of first-rate abilities, but it is said that he is a speculator. He asked me what sort of a man Wolcott was. I told him I knew nothing of him myself; I had heard him characterized as a cunning man. I asked him whether some person could not take my office *par interim*, till he should make an appointment, as Mr. Randolph, for instance. Yes, said he, but there you would raise the expectation of keeping it, and I do not know that he is fit for it, nor what is thought of Mr. Randolph. I avoided noticing the last observation, and he put the question to me directly. I then told him, I went into society so little as to be unable to answer it: I knew that the embarrassments in his private affairs had obliged him to use expedients, which had injured him with the merchants and shop-keepers, and affected his character of independence; that these embarrassments were serious, and not likely to cease soon. He said if I would only stay in till the end of another quarter (the last of December) it would get us through the difficulties of this year, and he was satisfied that the affairs of Europe would be settled with this campaign; for that either France would be overwhelmed by it, or the confederacy would give up the contest. By that time, too, Congress would have manifested its character and view. I told him that I had set my

private affairs in motion in a line which had powerfully called for my presence the last spring, and that they had suffered immensely from my not going home; that I had now calculated them to my return in the fall, and to fail in going then, would be the loss of another year, and prejudicial beyond measure. I asked him whether he could not name Governor Johnson to my office, under an express arrangement that at the close of the session he should take that of the Treasury. He said that men never chose to descend; that being once in a higher Department, he would not like to go into a lower one. He asked me whether I could not arrange my affairs by going home. I told him I did not think the public business would admit of it; that there never was a day now in which the absence of the Secretary of State would not be inconvenient to the public. And he concluded by desiring that I would take two or three days to consider whether I could not stay in till the end of another quarter, for that like a man going to the gallows, he was willing to put it off as long as he could; but if I persisted, he must then look about him and make up his mind to do the best he could; and so he took leave.

### CABINET MEETINGS.

August the 20th. We met at the President's to examine by paragraphs the draught of a letter I had prepared to Gouverneur Morris on the conduct of Mr. Genet. There was no difference of opinion on

any part of it, except on this expression, "An attempt to embroil both, to add still another nation to the enemies of his country, and to draw on both a reproach which it is hoped will never stain the history of either, that of *liberty warring on herself*." Hamilton moved to strike out these words, "that of liberty warring on herself." He urged generally that it would give offence to the combined powers; that it amounted to a declaration that they were warring on liberty; that we were not called on to declare that the cause of France was that of liberty; that he had at first been with them with all his heart, but that he had long since left them, and was not for encouraging the idea here, that the cause of France was the cause of liberty in general, or could have either connection or influence in our affairs. Knox, according to custom, jumped plump into all his opinions. The President, with a good deal of positiveness, declared in favor of the expression; that he considered the pursuit of France to be that of liberty, however they might sometimes fail of the best means of obtaining it; that he had never at any time entertained a doubt of their ultimate success, if they hung well together; and that as to their dissensions, there were such contradictory accounts given, that no one could tell what to believe. I observed that it had been supposed among us all along that the present letter might become public; that we had therefore three parties to attend to,—1st, France; 2d, her enemies; 3d,

the people of the United States; that as to the enemies of France, it ought not to offend them, because the passage objected to, only spoke of an attempt to make the United States, a *free nation*, war on France, a *free nation*, which would be liberty warring against liberty; that as to France, we were taking so harsh a measure (desiring her to recall her Minister) that a precedent for it could scarcely be found; that we knew that Minister would represent to his Government that our Executive was hostile to liberty, leaning to monarchy, and would endeavor to parry the charges on himself, by rendering suspicions the source from which they flowed; that, therefore, it was essential to satisfy France, not only of our friendship to her, but our attachment to the general cause of liberty, and to hers in particular; that as to the people of the United States, we knew there were suspicions abroad that the Executive, in some of its parts, was tainted with a hankering after monarchy, an indisposition towards liberty, and towards the French cause; and that it was important, by an explicit declaration, to remove these suspicions, and restore the confidence of the people in their Government. Randolph opposed the passage on nearly the same ground with Hamilton. He added, that he thought it had been agreed that this correspondence should contain no expressions which could give offence to either party. I replied that it had been my opinion in the beginning of the correspondence, that while

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the people of the United States; that as to the enemies of France, it ought not to offend them, because the passage objected to, only spoke of an attempt to make the United States, a *free nation*, war on France, a *free nation*, which would be liberty warring against liberty; that as to France, we were taking so harsh a measure (desiring her to recall her Minister) that a precedent for it could scarcely be found; that we knew that Minister would represent to his Government that our Executive was hostile to liberty, leaning to monarchy, and would endeavor to parry the charges on himself, by rendering suspicions the source from which they flowed; that, therefore, it was essential to satisfy France, not only of our friendship to her, but our attachment to the general cause of liberty, and to hers in particular; that as to the people of the United States, we knew there were suspicions abroad that the Executive, in some of its parts, was tainted with a hankering after monarchy, an indisposition towards liberty, and towards the French cause; and that it was important, by an explicit declaration, to remove these suspicions, and restore the confidence of the people in their Government. Randolph opposed the passage on nearly the same ground with Hamilton. He added, that he thought it had been agreed that this correspondence should contain no expressions which could give offence to either party. I replied that it had been my opinion in the beginning of the correspondence, that while

[As he had expressed this opinion to me the afternoon before, I had prepared the draught of a letter accordingly.] But how to explain the delay? The Secretary of the Treasury observed on the letter of the National Convention, that as it did not seem to require an answer, and the matters it contained would occasion embarrassment if answered, he should be against answering it; that he should be for writing to Mr. Morris, mentioning our readiness to treat with them, and suggesting a renewal of Mr. Genet's powers to his successor, but not in as strong terms as I had done in my draught of the letter—not as a thing anxiously wished for by us, lest it should suggest to them the asking a price; and he was for my writing to Mr. Genet *now*, an answer to his letter of May 22d, referring to the meeting of the Senate the entering on the treaty. Knox concurred with him, the Attorney General also,—except that he was against suggesting the renewal of Mr. Genet's powers, because that would amount to a declaration that we would treat with that government, would commit us to lay the subject before the Senate, and his principle had ever been to do no act, not unavoidably necessary, which, in the event of a counter revolution, might offend the future governing powers of that country. I stated to them that having observed from our conversations that the propositions to treat might not be acceded to immediately, I had endeavored to prepare Mr. Genet for it, by taking occasion in conversations to

apprize him of the control over treaties which our constitution had given to the Senate; that though this was indirectly done, (because not having been authorized to say anything official on the subject, I did not venture to commit myself directly,) yet, on some subsequent conversation, I found it had struck him exactly as I had wished; for, speaking on some other matter, he mentioned incidentally his propositions to treat, and said, however, as I know now that you cannot take up that subject till the meeting of the Senate, I shall say no more about it now, and so proceeded with his other subject, which I do not now recollect. I said I thought it possible by recalling the substance of these conversations to Mr. Genet, in a letter to be written now, I might add that the Executive had at length come to a conclusion, that on account of the importance of the matter, they would await the meeting of the Senate; but I pressed strongly the urging Mr. Morris to procure a renewal of Genet's powers, that we might not lose the chance of obtaining so advantageous a treaty. Edmund Randolph had argued against our acceding to it, because it was too advantageous; so much so that they would certainly break it, and it might become the cause of war. I answered that it would be easy, in the course of the negotiation, to cure it of its inequality by giving some compensation; but I had no fear of their revoking it, that the islanders themselves were too much interested in the concessions ever to suffer

them to be revoked; that the best thinkers in France had long been of opinion that it would be for the interest of the mother country to let the colonies obtain subsistence wherever they could cheapest; that I was confident the present struggles in France would end in a free government of some sort, and that such a government would consider itself as growing out of the present one, and respect its treaties. The President recurred to the awkwardness of writing a letter now to Mr. Genet, in answer to his of May 22d; that it would certainly be construed as merely done with a design of exculpation of ourselves, and he would thence inculpate us. The more we reflected on this, the more the justice of the observation struck us. Hamilton and myself came into it—Knox still for the letter—Randolph half for it, half against it, according to custom.

It was at length agreed I should state the substance of my verbal observations to Mr. Genet, in a letter to Mr. Morris, and let them be considered as the answer intended; for being from the Secretary of State, they might be considered as official, though not in writing.

It is evident that taking this ground for their future justification to France and to the United States, they were sensible they had censurably neglected these overtures of treaty; for not only what I had said to Mr. Genet was without authority from them, but was never communicated to them till this day. To rest the justification of delay on

answers given, it is true in time; but of which they had no knowledge till now, is an ostensible justification only.

September the 4th, 1793. At a meeting held some days ago, some letters from the Governor of Georgia were read, in which a consultation of officers, and a considerable expedition against the Creeks was proposed. We were all of opinion no such expedition should be undertaken. My reasons were that such a war might bring on a Spanish, and even an English war; that for this reason the aggressions of the Creeks had been laid before the last Congress, and they had not chosen to declare war, therefore the Executive should not take on itself to do it; and that according to the opinions of Pickens and Blount, it was too late in the season.

I thought, however, that a temperate and conciliatory letter should be written to the Governor, in order that we might retain the disposition of the people of the State to assist in an expedition when undertaken. The other gentlemen thought a strong letter of disapprobation should be written. Such a one was this day produced, strong and reprehendatory enough, in which I thought were visible the personal enmities of Knox and Hamilton, against Telfair, Gun, and Jackson—the two last having been of the council of officers. The letter passed without objection, being of the complexion before determined.

Wayne's letter was read, proposing that six hundred militia should set out from Fort Pitt to attack certain Miami towns, while he marched against the principal towns. The President disapproved it, because of the difficulty of concerted movements at six hundred miles distance; because these six hundred men might, and probably would have the whole force of the Indians to contend with; and because the object was not worth the risking such a number of men. We all concurred. It appeared to me, further, that to begin an expedition from Fort Pitt, the very first order for which is to be given now, when we have reason to believe Wayne advanced as far as Fort Jefferson, would be either too late for his movements, or would retard them very injuriously. [*Note.*—The letters from the Commissioners were now read, announcing the refusal of the Indians to treat, unless the Ohio were made the boundary; and that they were on their return.]

A letter from Governor Clinton read, informing of his issuing a warrant to arrest Governor Galbaud, at the request of the French Consul, and that he was led to interfere because the Judge of the district lived at Albany. It was proposed to write to the Judge of the district, that the place of his residence was not adapted to his duties; and to Clinton, that Galbaud was not liable to arrest. Hamilton said, that by the laws of New York, the Governor has the powers of a justice of peace, and had issued the warrant as such.

I was against writing letters to judiciary officers. I thought them independent of the Executive, not subject to its coercion, and, therefore, not obliged to attend to its admonitions.

The other three were for writing the letters. They thought it the duty of the President to see that the laws were executed; and if he found a failure in so important an officer, to communicate it to the legisture for impeachment.

Edmund Randolph undertook to write the letters, and I am to sign them as if mine. The President brought forward the subject of the ports, and thought a new demand of answer should be made to Mr. Hammond. As we had not Mr. Hammond's last answer (of June 20th) on that subject, agreed to let it lie over to Monday.

Hammond proposed, that on Monday we should take into consideration the fortification of the rivers and ports of the United States, and that though the Executive could not undertake to do it, preparatory surveys should be made to be laid before Congress, to be considered on Monday.

The letters to Genet covering a copy of mine to Gov. Morris—of ——— to the French consuls, threatening the revocation of their Exequaturs—to Mr. Pinckney on the additional instructions of Great Britain to their navy for shipping our corn, flour, &c., and to Gov. Morris on the similar order of the French National Assembly, are to be ready on Monday.

My letter to Mr. Hammond, in answer to his of August 30th, was read and approved. Hamilton wished not to narrow the ground of compensation so much as to cases after August 7th. Knox joined him, and by several observations showed he did not know what the question was. He could not comprehend that the letter of August 7th, which promised compensation (because we had not used all the means in our power for restricting), would not be contradicted by a refusal to compensate in cases after August 7th, where we should naturally use all the means in our power for restriction, and these means should be insufficient. The letter was agreed to on Mr. Randolph's opinion and mine; Hamilton acquiescing, Knox opposing.

At sundry meetings of the Heads of Departments and Attorney General, from the 1st to the 28th of November, 1793, at the President's, several matters were agreed upon, as stated in the following letters from the Secretary of State, to wit:—

November the 8th. Circular letter to the representatives of France, Great Britain, Spain, and the United Netherlands, fixing provisionally the extent of our jurisdiction into the sea at a sea league.

10th. Circular letter to the district attorneys, notifying the same, and committing to them the taking depositions in those cases.

10th. Circular to the foreign representatives, notifying how depositions are to be taken in those cases.

The substance of the preceding letters was agreed to by all; the rough draughts were submitted to them and approved.

November the 14th. To Mr. Hammond, that the United States are not bound to restore the Rochampton. This was agreed by all. The rough draught was submitted to and approved by Colonel Hamilton and Mr. Randolph. General Knox was on a visit to Trenton.

10th. Letters to Mr. Genet and Hammond, and the 14th to Mr. Hollingsworth, for taking depositions in the cases of the Conningham and Pilgrim.

13th. Ditto, to Mr. Genet, Hammond, and Bowle, for depositions in the case of the William.

14th. Ditto, to Hollingsworth, to ascertain whether Mr. Moissonier had passed sentence on the Rochampton and Pilgrim.

These last-mentioned letters of the 10th, 13th, and 14th, were, as to their substance, agreed to by all, the draughts were only communicated to Mr. Randolph, and approved by him.

November the 13th. To Mr. Hammond, inquiring when we shall have an answer on the inexecution of the treaty. The substance agreed by all. The letter was sent off without communication, none of the gentlemen being at Germantown.

22d. To Mr. Genet, returning the commissions of Pennevert and Chervi, because not addressed to the President.

22d. To Mr. Genet, inquiring whether the Lovely-Lass, Prince William Henry, and Jane, of Dublin, have been given up; and if not, requiring that they be restored to owners. These were agreed to by all, as to their matter, and the letters themselves were submitted before they were sent to the President, the Secretary of War, and the Attorney-General.

22d. To Mr. Gore, for authentic evidence of Dannery's protest on the President's revocation of Duplaine's Exequatur. The substance agreed by all. The letter sent off before communication.

THOMAS JEFFERSON.
HENRY KNOX.
EDMUND RANDOLPH.
ALEXANDER HAMILTON.

November 23d, 1793.

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November the 5th, 1793. E. Randolph tells me, that Hamilton, in conversation with him yesterday, said, "Sir, if all the people in America were now assembled, and to call on me to say whether I am a friend to the French revolution, I would declare that *I have it in abhorrence.*"

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CONFERENCES OF THE CABINET.

November the 8th, 1793. At a conference at the President's, where I read several letters of Mr. Genet; on finishing one of them, I asked what should

be the answer? The President thereupon took occasion to observe, that Mr. Genet's conduct continued to be of so extraordinary a nature, that he meant to propose to our serious consideration, whether he should not have his functions discontinued, and be ordered away? He went lengthily into observations on his conduct, to raise against the Executive, 1, the People; 2, the State Governments; 3, the Congress. He showed he felt the venom of Genet's pen, but declared he would not choose his insolence should be regarded any further, than as might be thought to affect the honor of the country. Hamilton and Knox readily and zealously argued for dismissing Mr. Genet. Randolph opposed it with firmness, and pretty lengthily. The President replied to him lengthily, and concluded by saying he did not wish to have the thing hastily decided, but that we should consider of it, and give our opinions on his return from Reading and Lancaster.

Accordingly, November the 18th, we met at his house; read new volumes of Genet's letters, received since the President's departure; then took up the discussion of the subjects of communication to Congress. 1. The Proclamation. E. Randolph read the statement he had prepared; Hamilton did not like it; said much about his own views; that the President had a right to declare his opinion to our citizens and foreign nations; that it was not the interest of this country to join in the war, and that we were under no obligation to join in it; that though

the declaration would not legally bind Congress, yet the President had a right to give his opinion of it, and he was against any explanation in the speech, which should yield that he did not intend that foreign nations should consider it as a declaration of neutrality, future as well as present; that he understood it as meant to give them that sort of assurance and satisfaction, and to say otherwise now, would be a deception on them. He was for the President's using such expressions, as should neither affirm his right to make such a declaration to foreign nations, nor yield it. Randolph and myself opposed the right of the President to declare anything future on the question, shall there or shall there not be war, and that no such thing was intended; that Hamilton's construction of the effect of the proclamation, would have been a determination of the question of the *guarantee*, which we both denied to have intended, and I had at the time declared the Executive incompetent to. Randolph said he meant that foreign nations should understand it as an intimation of the President's opinion, that neutrality would be our interest. I declared my meaning to have been, that foreign nations should understand no such thing; that on the contrary, I would have chosen them to be doubtful, and to come and bid for our neutrality. I admitted the President, having received the nation at the close of Congress in a state of peace, was bound to preserve them in that state till Congress should meet again, and might pro-

claim anything which went no farther. The President declared he never had an idea that he could bind Congress against declaring war, or that anything contained in his proclamation could look beyond the first day of their meeting. His main view was to keep our people in peace; he apologized for the use of the term neutrality in his answers, and justified it, by having submitted the first of them (that to the merchants, wherein it was used) to our consideration, and we had not objected to the term. He concluded in the end, that Colonel Hamilton should prepare a paragraph on this subject for the speech, and it should then be considered. We were here called to dinner.

After dinner, the *renvoi* of Genet was proposed by himself. I opposed it on these topics. France, the only nation on earth sincerely our friend. The measure so harsh a one, that no precedent is produced where it has not been followed by war. Our messenger has now been gone eighty-four days; consequently, we may hourly expect the return, and to be relieved by their revocation of him. Were it now resolved on, it would be eight or ten days before the matter on which the order should be founded, could be selected, arranged, discussed, and forwarded. This would bring us within four or five days of the meeting of Congress. Would it not be better to wait and see how the pulse of that body, new as it is, would beat? They are with us now, probably, but such a step as this may carry

many over to Genet's side. Genet will not obey the order, &c., &c. The President asked me what I would do if Genet sent the accusation to us to be communicated to Congress, as he threatened in the letter to Moultrie? I said I would not send it to Congress; but either put it in the newspapers, or send it back to him to be published if he pleased. Other questions and answers were put and returned in a quicker altercation than I ever before saw the President use. Hamilton was for the *renvoi;* spoke much of the dignity of the nation; that they were now to form their character; that our conduct now would tempt or deter other foreign Ministers from treating us in the same manner; touched on the President's personal feelings; did not believe France would make it a cause of war; if she did, we ought to do what was right, and meet the consequences, &c. Knox on the same side, and said he thought it very possible Mr. Genet would either declare us a department of France, or levy troops here and endeavor to reduce us to obedience. Randolph of my opinion, and argued chiefly on the resurrection of popularity to Genet, which might be produced by this measure. That at present he was dead in the public opinion, if we would but leave him so. The President lamented there was not unanimity among us; that as it was, we had left him exactly where we found him; and so it ended.

November the 21st. We met at the President's. The manner of explaining to Congress the inten-

tions of the proclamation, was the matter of debate. Randolph produced his way of stating it. This expressed its views to have been, 1, to keep our citizens quiet; 2, to intimate to foreign nations that it was the President's opinion, that the interests and dispositions of this country were for peace. Hamilton produced his statement, in which he declared his intention to be, to say nothing which could be laid hold of for any purpose; to leave the proclamation to explain itself. He entered pretty fully into all the argumentation of Pacificus; he justified the right of the President to declare his opinion for a *future neutrality*, and that there existed no circumstances to oblige the United States to enter into the war on account of the guarantee; and that in agreeing to the proclamation, he meant it to be understood as conveying both those declarations; viz. neutrality, and that the *casus fœderis* on the guarantee did not exist. He admitted the Congress might declare war, notwithstanding these declarations of the President. In like manner, they might declare war in the face of a treaty, and in direct infraction of it. Among other positions laid down by him, this was with great positiveness; that the Constitution having given power to the President and Senate to make treaties, they might make a treaty of neutrality which should take from Congress the right to declare war in that particular case, and that under the form of a treaty they might exercise any powers whatever, even those exclusively

given by the constitution to the House of Representatives. Randolph opposed this position, and seemed to think that where they undertook to do acts by treaty, (as to settle a tariff of duties,) which were exclusively given to the Legislature, that an act of the Legislature would be necessary to confirm them, as happens in England, when a treaty interferes with duties established by law. I insisted that in giving to the President and Senate a power to make treaties, the Constitution meant only to authorize them to carry into effect, by way of treaty, any powers they might constitutionally exercise. I was sensible of the weak points in this position, but there were still weaker in the other hypothesis; and if it be impossible to discover a rational measure of authority to have been given by this clause, I would rather suppose that the cases which my hypothesis would leave unprovided, were not thought of by the convention, or if thought of, could not be agreed on, or were thought of and deemed unnecessary to be invested in the Government. Of this last description, were treaties of neutrality, treaties offensive and defensive, &c. In every event, I would rather construe so narrowly as to oblige the nation to amend, and thus declare what powers they would agree to yield, than too broadly, and indeed, so broadly as to enable the executive and Senate to do things which the Constitution forbids. On the question, which form of explaining the principles of the proclamation should be adopted, I declared

for Randolph's, though it gave to that instrument more objects than I had contemplated. Knox declared for Hamilton's. The President said he had had but one object, the keeping our people quiet till Congress should meet; that nevertheless, to declare he did not mean a declaration of neutrality, in the technical sense of the phrase, might perhaps be crying *peccavi* before he was charged. However, he did not decide between the two draughts.

November the 23d. At the President's. Present, Knox, Randolph, and Th: Jefferson. Subject, the heads of the speech. One was, a proposition to Congress to fortify the principal harbors. I opposed the expediency of the general Government's undertaking it, and the expediency of the President's proposing it. It was amended, by substituting a proposition to adopt means for enforcing respect to the jurisdiction of the United States within its waters. It was proposed to recommend the establishment of a military academy. I objected that none of the specified powers given by the Constitution to Congress, would authorize this. It was, therefore, referred for further consideration and inquiry. Knox was for both propositions. Randolph against the former, but said nothing as to the latter. The President acknowledged he had doubted of the expediency of undertaking the former; and as to the latter, though it would be a good thing, he did not wish to bring on anything

which might generate heat and ill humor. It was agreed that Randolph should draw the speech and the messages.

November the 28th. Met at the President's. I read over a list of the papers copying, to be communicated to Congress on the subject of Mr. Genet. It was agreed that Genet's letter of August the 13th to the President, mine of August the 16th, and Genet's of November to myself and the Attorney General, desiring a prosecution of Jay and King should not be sent to the legislature: on a general opinion, that the discussion of the fact certified by Jay and King had better be left to the channel of the newspapers, and in the private hands in which it now is, than for the President to meddle in it, or give room to a discussion of it in Congress.

Randolph had prepared a draught of the speech. The clause recommending fortifications was left out; but that for a military academy was inserted. I opposed it, as unauthorized by the Constitution. Hamilton and Knox approved it without discussion. Randolph was for it, saying that the words of the Constitution authorizing Congress to lay taxes, &c., *for the common defence*, might comprehend it. The President said he would not choose to recommend anything against the Constitution, but if it was *doubtful*, he was so impressed with the necessity of this measure, that he would refer it to Congress, and let them decide for themselves whether the Constitu-

tion authorized it or not. It was, therefore, left in. I was happy to see that Randolph had, by accident. used the expression "our republic," in the speech. The President, however, made no objection to it, and so, as much as it had disconcerted him on a former occasion with me, it was now put into his own mouth to be pronounced to the two Houses of legislature.

No material alterations were proposed or made in any part of the draught.

After dinner, I produced the draught of messages on the subject of France and England, proposing that that relative to Spain should be subsequent and secret.

Hamilton objected to the draught *in toto;* said that the contrast drawn between the conduct of France and England amounted to a declaration of war; he denied that France had ever done us favors; that it was mean for a nation to acknowledge favors; that the dispositions of the people of this country towards France, he considered as a serious calamity; that the Executive ought not, by an echo of this language, to nourish that disposition in the people; that the offers in commerce made us by France, were the offspring of the moment, of circumstances which would not last, and it was wrong to receive as permanent, things merely temporary; that he could demonstrate that Great Britain showed us more favors than France. In complaisance to him I whittled down the expressions without opposition; struck out that of "favors

ancient and recent" from France; softened some terms, and omitted some sentiments respecting Great Britain. He still was against the whole, but insisted that, at any rate, it should be a secret communication, because the matters it stated were still depending. These were, 1, the inexecution of the treaty; 2, the restraining our commerce to their own ports and those of their friends. Knox joined Hamilton in everything. Randolph was for the communications; that the documents respecting the first should be given in as public; but that those respecting the second should not be given to the legislature at all, but kept secret. I began to tremble now for the whole, lest all should be kept secret. I urged, especially, the duty now incumbent on the President, to lay before the legislature and the public what had passed on the inexecution of the treaty, since Mr. Hammond's answer of this month might be considered as the last we should ever have; that, therefore, it could no longer be considered as a negotiation pending. I urged that the documents respecting the stopping our corn ought also to go, but insisted that if it should be thought better to withhold them, the restrictions should not go to those respecting the treaty; that neither of these subjects was more in a state of *pendency* than the recall of Mr. Genet, on which, nevertheless, no scruples had been expressed. The President took up the subject with more vehemence than I have seen him show, and decided without reserve, that not only what had passed on the

inexecution of the treaty should go in as public, (in which Hamilton and Knox had divided in opinion from Randolph and myself,) but also that those respecting the stopping our corn should go in as public, (wherein, Hamilton, Knox, and Randolph had been against me). This was the first instance I had seen of his deciding on the opinion of one against that of three others, which proved his own to have been very strong.

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December the 1st, 1793. Beckley tells me he had the following fact from Lear. Langdon, Cabot, and some others of the Senate, standing in a knot before the fire after the Senate had adjourned, and growling together about some measure which they had just lost; "Ah!" said Cabot, "things will never go right till you have a President for life, and an hereditary Senate." Langdon told this to Lear, who mentioned it to the President. The President seemed struck with it, and declared he had not supposed there was a man in the United States who could have entertained such an idea.

### CONVERSATION WITH JOHN ADAMS.

March the 2d, 1797. I arrived at Philadelphia to qualify as Vice-President, and called instantly on Mr. Adams, who lodged at Francis's, in Fourth street. The next morning he returned my visit at Mr. Madison's, where I lodged. He found me alone in my

room, and shutting the door himself, he said he was glad to find me alone, for that he wished a free conversation with me. He entered immediately on an explanation of the situation of our affairs with France, and the danger of rupture with that nation, a rupture which would convulse the attachments of this country; that he was impressed with the necessity of an immediate mission to the Directory; that it would have been the first wish of his heart to have got me to go there, but that he supposed it was out of the question, as it did not seem justifiable for him to send away the person destined to take his place in case of accident to himself, nor decent to remove from competition one who was a rival in the public favor. That he had, therefore, concluded to send a mission, which, by its dignity, should satisfy France, and by its selection from the three great divisions of the continent, should satisfy all parts of the United States; in short, that he had determined to join Gerry and Madison to Pinckney, and he wished me to consult Mr. Madison for him. I told him that as to myself, I concurred in the opinion of the impropriety of my leaving the post assigned me, and that my inclinations, moreover, would never permit me to cross the Atlantic again; that I would, as he desired, consult Mr. Madison, but I feared it was desperate, as he had refused that mission on my leaving it, in General Washington's time, though it was kept open a twelvemonth for him. He said that if Mr. Madison should refuse, he would still appoint

him, and leave the responsibility on him. I consulted Mr. Madison, who declined as I expected. I think it was on Monday, the 6th of March, Mr. Adams and myself met at dinner at General Washington's, and we happened, in the evening, to rise from table and come away together. As soon as we got into the street, I told him the event of my negotiation with Mr. Madison. He immediately said, that, on consultation, some objections to that nomination had been raised which he had not contemplated; and was going on with excuses which evidently embarrassed him, when we came to Fifth street, where our road separated, his being down Market street, mine off along Fifth, and we took leave; and he never after that said one word to me on the subject, or ever consulted me as to any measures of the government. The opinion I formed at the time on this transaction, was, that Mr. Adams, in the first moments of the enthusiasm of the occasion, (his inauguration,) forgot party sentiments, and as he never acted on any system, but was always governed by the feeling of the moment, he thought, for a moment, to steer impartially between the parties; that Monday, the 6th of March, being the first time he had met his cabinet, on expressing ideas of this kind, he had been at once diverted from them, and returned to his former party views.

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July, 1797. Murray is rewarded for his services by an appointment to Amsterdam; W. Smith of Charleston, to Lisbon.

August the 24th. About the time of the British treaty, Hamilton and Talleyrand, bishop of Autun, dined together, and Hamilton drank freely. Conversing on the treaty, Talleyrand said, "mais vraiment Monsieur Hamilton, ce n'est pas *bien honnete*, after making the Senate ratify the treaty, to advise the President to reject it." "The treaty," said Hamilton, "is an execrable one, and Jay was an old woman for making it; but the whole credit of saving us from it must be given to the President." After circumstances had led to a conclusion that the President also must ratify it, he said to the same Talleyrand, "though the treaty is a most execrable one, yet when once we have come to a determination on it, we must carry it through thick and thin, right or wrong." Talleyrand told this to Volney, who told it to me.

There is a letter now appearing in the papers, from Pickering to Monroe, dated July the 24th, 1797, which I am satisfied is written by Hamilton. He was in Philadelphia at that date.

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December the 26th, 1797. Langdon tells me, that at the second election of President and Vice-President of the United States, when there was a considerable vote given to Clinton in opposition to Mr. Adams, he took occasion to remark it in conversation in the Senate chamber with Mr. Adams, who, gritting his teeth, said, "damn 'em, damn 'em,

damn 'em, you see that an elective government will not do." He also tells me that Mr. Adams, in a late conversation, said, "republicanism must be disgraced, Sir." The Chevalier Yruho called on him at Braintree, and conversing on French affairs, and Yruho expressing his belief of their stability, in opposition to Mr. Adams, the latter lifting up and shaking his finger at him, said, "I'll tell you what, the French republic will not last three months." This I had from Yruho.

Harper, lately in a large company, was saying that the best thing the friends of the French could do, was to pray for the restoration of their monarch. "Then," said a bystander, "the best thing we could do, I suppose, would be to pray for the establishment of a monarch in the United States." "Our people," said Harper, "are not yet ripe for it, but it is the best thing we can come to, and we shall come to it." Something like this was said in presence of Findlay. He now denies it in the public papers, though it can be proved by several members.

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December the 27th. Tenche Coxe tells me, that a little before Hamilton went out of office, or just as he was going out, taking with him his last conversation, and among other things, on the subject of their differences, "for my part," said he, "I avow myself a monarchist; I have no objection to a trial being made of this thing of a republic, but," &c.

January the 5th, 1798. I receive a very remarkable fact indeed in our history, from Baldwin and Skinner. Before the establishment of our present government, a very extensive combination had taken place in New York and the eastern States, among that description of people who were partly monarchical in principle, or frightened with Shay's rebellion and the impotence of the old Congress. Delegates in different places had actually had consultations on the subject of seizing on the powers of a government, and establishing them by force;. had corresponded with one another, and had sent a deputy to General Washington to solicit his cooperation. He refused to join them. The new convention was in the meantime proposed by Virginia and appointed. These people believed it impossible the States should ever agree on a government, as this must include the impost and all the other powers which the States had a thousand times refused to the general authority. They therefore let the proposed convention go on, not doubting its failure, and confiding that on its failure would be a still more favorable moment for their enterprise. They therefore wished it to fail, and especially, when Hamilton, their leader, brought forward his plan of government, failed entirely in carrying it, and retired in disgust from the convention. His associates then took every method to prevent any form of government being agreed to. But the well-intentioned never ceased trying, first one thing, then another, till they

could get something agreed to. The final passage and adoption of the Constitution completely defeated the views of the combination, and saved us from an attempt to establish a government over us by force. This fact throws a blaze of light on the conduct of several members from New York and the eastern States in the convention of Annapolis, and the grand convention. At that of Annapolis, several eastern members most vehemently opposed Madison's proposition for a more general convention, with more general powers. They wished things to get more and more into confusion, to justify the violent measure they proposed. The idea of establishing a government by reasoning and agreement, they publicly ridiculed as an Utopian project, visionary and unexampled.

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February the 6th, 1798. Mr. Baldwin tells me, that in a conversation yesterday with Goodhue, on the state of our affairs, Goodhue said, "I'll tell you what, I have made up my mind on this subject; I would rather the old ship should go down than not;" (meaning the Union of the States). Mr. Hillhouse coming up, "well," said Mr. Baldwin, "I'll tell my old friend Hillhouse what you say;" and he told him. "Well," said Goodhue, "I repeat that I would rather the old ship should go down, if we are to be always kept pumping so." "Mr. Hillhouse," said Baldwin, "you remember when we were learning

logic together at school, there was the case *categorical* and the case *hypothetical*. Mr. Goodhue stated it to me first as the case categorical. I am glad to see that he now changes it to the case hypothetical, by adding, 'if we are always to be kept pumping so.' " Baldwin went on then to remind Goodhue what an advocate he had been for our tonnage duty, wanting to make it one dollar instead of fifty cents; and how impatiently he bore the delays of Congress in proceeding to retaliate on Great Britain before Mr. Madison's propositions came on. Goodhue acknowledged that his opinions had changed since that.

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### DINNER WITH PRESIDENT ADAMS.

February the 15th, 1798. I dined this day with Mr. Adams, (the President). The company was large. After dinner I was sitting next to him, and our conversation was first on the enormous price of labor,[1] house rent, and other things. We both concurred in ascribing it chiefly to the floods of bank paper now afloat, and in condemning those institutions. We then got on the Constitution; and in the course of our conversation he said, that no republic could ever last which had not a Senate, and a Senate deeply and strongly rooted, strong enough to bear

[1] He observed, that eight or ten years ago, he gave only fifty dollars to a common laborer for his farm, finding him food and lodging. Now he gives one hundred and fifty dollars, and even two hundred dollars to one.

up against all popular storms and passions; that he thought our Senate as well constituted as it could have been, being chosen by the legislatures; for if these could not support them, he did not know what could do it; that perhaps it might have been as well for them to be chosen by the State at large, as that would insure a choice of distinguished men, since none but such could be known to a whole people; that the only fault in our Senate was, that it was not durable enough; that hitherto, it had behaved very well; however, he was afraid they would give way in the end. That as to trusting to a popular assembly for the preservation of our liberties, it was the merest chimera imaginable; they never had any rule of decision but their own will; that he would as lieve be again in the hands of our old committees of safety, who made the law and executed it at the same time; that it had been observed by some writer, (I forget whom he named,) that anarchy did more mischief in one night, than tyranny in an age; and that in modern times we might say with truth, that in France, anarchy had done more harm in one night, than all the despotism of their Kings had ever done in twenty or thirty years. The point in which he views our Senate, as the colossus of the Constitution, serves as a key to the politics of the Senate, who are two-thirds of them in his sentiments, and accounts for the bold line of conduct they pursue.

March the 1st. Mr. Tazewell tells me, that when the appropriations for the British treaty were on the carpet, and very uncertain in the lower House, there being at that time a number of bills in the hands of committees of the Senate, none reported, and the Senate idle for want of them, he, in his place, called on the committees to report, and particularly on Mr. King, who was of most of them. King said that it was true the committees kept back their reports, waiting the event of the question about appropriation; that if that was not carried, they considered legislation as at an end; that they might as well break up and consider the Union as dissolved. Tazewell expressed his astonishment at these ideas, and called on King to know if he had misapprehended him. King rose again and repeated the same words. The next day, Cabot took an occasion in debate, and so awkward a one as to show it was a thing agreed to be done, to repeat the same sentiments in stronger terms, and carried further, by declaring a determination on their side to break up and dissolve the government.

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March the 11th. In conversation with Baldwin, and Brown of Kentucky, Brown said that in a private company once, consisting of Hamilton, King, Madison, himself, and some one else making a fifth, speaking of the "*federal government;*" "Oh!" said Hamilton, "say the *federal monarchy*, let us call things by their right names, for a monarchy it is."

Baldwin mentions at table the following fact: When the bank bill was under discussion in the House of Representatives, Judge Wilson came in, and was standing by Baldwin. Baldwin reminded him of the following fact which passed in the grand convention: Among the enumerated powers given to Congress, was one to erect corporations. It was, on debate, struck out. Several particular powers were then proposed. Among others, Robert Morris proposed to give Congress a power to establish a national bank. Gouverneur Morris opposed it, observing that it was extremely doubtful whether the Constitution they were framing could ever be passed at all by the people of America; that to give it its best chance, however, they should make it as palatable as possible, and put nothing into it not very essential, which might raise up enemies; that his colleague (Robert Morris) well knew that "a bank" was, in their State, (Pennsylvania,) the very watch-word of party; that *a bank* had been the great bone of contention between the two parties of the State from the establishment of their constitution, having been erected, put down, and erected again, as either party preponderated; that therefore, to insert this power, would instantly enlist against the whole instrument, the whole of the anti-bank party in Pennsylvania. Whereupon it was rejected, as was every other special power, except that of giving copyrights to authors, and patents to inventors; the general power of incorporating being whittled down to this shred. Wilson agreed to the fact.

Mr. Hunter, of South Carolina, who lodges with Rutledge,[1] tells me that Rutledge was explaining to him the plan they proposed to pursue as to war measures when Otis came in. Rutledge addressed Otis. Now, sir, said he, you must come forward with something liberal for the southern States; fortify their harbors, and build gallies, in order to obtain their concurrence. Otis said, we insist on convoys for our European trade, and *guarda costas*, on which condition alone we will give them gallies and fortifications. Rutledge observed, that in the event of war, McHenry and Pickering must go out; Wolcott, he thought, might remain, but the others were incapable of conducting a war. Otis said the eastern people would never abandon Pickering, he must be retained; McHenry might go. They considered together whether General Pinckney would accept the office of Secretary of War. They apprehended he would not. It was agreed in this conversation that Sewall had more the ear of the President than any other person.

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March the 12th. When the bill for appropriations was before the Senate, Anderson moved to strike out a clause recognizing (by way of appropriation) the appointment of a committee by the House of Representatives to sit during their recess to collect evidence on Blount's case, denying they had power, but by a law, to authorize a committee to sit during recess.

[1] J. Rutledge, junior.

Tracy advocated the motion, and said, "We may as well speak out. The committee was appointed by the House of Representatives to take care of the British Minister, to take care of the Spanish Minister, to take care of the Secretary of State, in short, to take care of the President of the United States. They were afraid the President, and Secretary of State would not perform the office of collecting evidence faithfully; that there would be collusion, &c. Therefore, the House appointed a committee of their own. We shall have them next sending a committee to Europe to make a treaty, &c. Suppose that the House of Representatives should resolve, that after the adjournment of Congress, they should continue to sit as a committee of the whole House during the whole recess." This shows how the appointment of that committee has been viewed by the President's friends.

April the 5th. Doctor Rush tells me he had it from Mrs. Adams, that not a scrip of a pen has passed between the late and present President since he came into office.

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April the 13th. New instructions of the British Government to their armed ships now appear, which clearly infringe their treaty with us, by authorizing them to take our vessels carrying produce of the French colonies from those colonies to Europe, and to take vessels bound to a blockaded port. See them in Brown's paper, of April the 18th, in due form.

The President has sent a government brig to France, probably to carry despatches. He has chosen as the bearer of these one Humphreys, the son of a ship carpenter, ignorant, under age, not speaking a word of French, most abusive of that nation, whose only merit is, the having mobbed and beaten Bache on board the frigate built here, for which he was indicted and punished by fine.

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April the 25th. At a dinner given by the bar to the federal judges, Chase and Peters, present about twenty-four lawyers, and William Tilghman in the chair, this toast was given, "Our *King* in old England." Observe the double *entendre* on the word King. Du Ponceau, who was one of the bar present, told this to Tenche Coxe, who told me in presence of H. Tazewell. Dallas was at the dinner; so was Colonel Charles Sims, of Alexandria, who is here on a lawsuit *vs.* General Irving.

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May the 3d. The President some time ago appointed Steele, of Virginia, a commissioner to the Indians, and recently Secretary of the Mississippi Territory. Steele was a Counsellor of Virginia, and was voted out by the Assembly because he turned tory. He then offered for Congress, and was rejected by the people. Then offered for the Senate of Virginia, and was rejected. The President has also

appointed Joseph Hopkinson commissioner to make a treaty with the Oneida Indians. He is a youth of about twenty-two or twenty-three, and has no other claims to such an appointment than extreme toryism, and the having made a poor song to the tune of the President's March.

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October the 13th, 1798. Littlepage, who has been on one or two missions from Poland to Spain, said that when Gardoqui returned from America, he settled with his court an account of secret service money of six hundred thousand dollars. *Ex-relatione* Colonel Monroe.

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January, 1799. In a conversation between Dr. Ewen and the President, the former said one of his sons was an aristocrat, the other a democrat. The President asked if it was not the youngest who was the democrat. "Yes," said Ewen. "Well," said the President, "a boy of fifteen who is not a democrat is good for nothing, and he is no better who is a democrat at twenty." Ewen told Hurt, and Hurt told me.

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January the 14th. Logan tells me that in his conversation with Pickering on his arrival, the latter abused Gerry very much; said he was a traitor to his country, and had deserted the post to which he was appointed; that the French temporized at first

with Pinckney, but found him too much of a man for their purpose. Logan observing, that notwithstanding the pacific declarations of France, it might still be well to keep up the military ardor of our citizens, and to have the militia in good order; "the militia," said Pickering, "the militia never did any good to this country, except in the single affair of Bunker Hill; that we must have a standing army of fifty thousand men, which being stationed in different parts of the continent, might serve as rallying points for the militia, and so render them of some service." In his conversation with Mr. Adams, Logan mentioned the willingness of the French to treat with Gerry. "And do you know why?" said Mr. Adams. "Why, sir?" said Logan. "Because," said Mr. Adams, "they know him to have been an anti-federalist, against the Constitution."

January the 2d, 1800. Information from Tenche Coxe. Mr. Liston had sent two letters to the Governor of Canada by one Sweezy. He had sent copies of them, together with a third (original) by one Cribs. Sweezy was arrested (being an old horse thief), and his papers examined. T. Coxe had a sight of them. As soon as a rumor got out that there were letters of Mr. Liston disclosed, but no particulars yet mentioned, Mr. Liston suspecting that *Cribs* had betrayed him, thought it best to bring all his *three* letters, and lay them before Pickering, Secretary of State. Pickering thought them all very innocent. In his office they were seen by a Mr.

Hodgen, of New Jersey, commissary of military stores, and the intimate friend of Pickering. It happens that there is some land partnership between Pickering, Hodgen and Coxe, so that the latter is freely and intimately visited by Hodgen, who, moreover, speaks freely with him on political subjects. They were talking the news of the day, when Mr. Coxe observed that these intercepted letters of Liston were serious things; (nothing being yet out but a general rumor). Hodgen asked which he thought the most serious. Coxe said the second; (for he knew yet of no other). Hodgen said he thought little of any of them, but that the third was the most exceptionable. This struck Coxe, who, not betraying his ignorance of a third letter, asked generally what part of that he alluded to. Hodgen said to that wherein he *assured the Governor of Canada, that if the French invaded Canada, an army would be marched from these States to his assistance.* After this it became known that it was Sweezy who was arrested, and not Cribs; so that Mr. Liston had made an unnecessary disclosure of his third letter to Mr. Pickering, who, however, keeps his secret for him. In the beginning of the conversation between Hodgen and Coxe, Coxe happened to name Sweezy as the bearer of the letters. "That's not his name," said Hodgen (for he did not know that two of the letters had been sent by Sweezy also), "his name is Cribs." This put Coxe on his guard, and sent him fishing for the new matter.

January the 10th. Doctor Rush tells me that he had it from Samuel Lyman, that during the X Y Z Congress, the federal members held the largest caucus they have ever had, at which he was present, and the question was proposed and debated, whether they should declare war against France, and determined in the negative. Lyman was against it.

He tells me, that Mr. Adams told him, that when he came on in the fall to Trenton, he was there surrounded constantly by the opponents of the late mission to France. That Hamilton pressing him to delay it, said, "Why, sir, by Christmas, Louis the XVIII. will be seated on his throne." Mr. A. "By whom?" H. "By the coalition." Mr. A. "Ah! then farewell to the independence of Europe. If a coalition moved by the finger of England, is to give a government to France, there is an end to the independence of every country."

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January the 12th. General Samuel Smith says that Pickering, Wolcott, and McHenry, wrote a joint letter from Trenton to the President, then at Braintree, dissuading him from the mission to France. Stoddard refused to join in it. Stoddard says the instructions are such, that if the Directory have any disposition to reconciliation, a treaty will be made. He observed to him, also, that Ellsworth looks beyond this mission to the Presidential chair. That with this view, he will endeavor to make a treaty,

and a good one. That Davie has the same vanity and views. All this communicated by Stoddard to S. Smith.

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January the 13th. Baer and Harrison G. Otis told J. Nicholas, that in the caucus mentioned ante 10th, there wanted but five votes to produce a declaration of war. Baer was against it.

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January the 19th. W. C. Nicholas tells me, that in a conversation with Dexter three or four days ago, he asked Dexter whether it would not be practicable for the States to agree on some uniform mode of choosing electors of President. Dexter said, "I suppose you would prefer an election by districts." "Yes," said Nicholas, "I think it would be best; but would nevertheless agree to any other consistent with the Constitution." Dexter said he did not know what might be the opinion of his State, but his own was, that no mode of *election* would answer any good purpose; that he should prefer one *for life*. "On that reasoning," said Nicholas, "you should prefer an hereditary one." "No," he said, "we are not ripe for that yet. I suppose," added he, "this doctrine is not very popular with you." "No," said Nicholas, "it would effectually damn any man in my State." "So it would in mine," said Dexter; "but I am under no inducement to belie my sentiment, I have nothing to ask from anybody; I had

rather be at home than here, therefore I speak my sentiments freely." Mr. Nicholas, a little before or after this, made the same proposition of a uniform election to Ross, who replied that he saw no good in any kind of election. "Perhaps," said he, "the present one may last awhile." On the whole, Mr. Nicholas thinks he perceives in that party, a willingness and a wish to let everything go from bad to worse, to amend nothing, in hopes it may bring on confusion, and open a door to the kind of government they wish. In a conversation with Gunn, who goes with them, but thinks in some degree with us, Gunn told him that the very game which the minority of Pennsylvania is now playing with McKean, (see substitute of minority in lower House, and address of Senate in upper,) was meditated by the same party in the federal government, in case of the election of a republican President; and that the eastern States would in that case throw things into confusion, and break the Union. That they have in a great degree got rid of their paper, so as no longer to be creditors, and the moment they cease to enjoy the plunder of the immense appropriations now exclusively theirs, they would aim at some other order of things.

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January the 24th. Mr. Smith, a merchant of Hamburg, gives me the following information: The St. Andrew's Club of New York, (all of Scotch tories,) gave a public dinner lately. Among other

guests, Alexander Hamilton was one. After dinner, the first toast was, "The President of the United States." It was drank without any particular approbation. The next was, "George the Third." Hamilton started up on his feet, and insisted on a bumper and three cheers. The whole company accordingly rose and gave the cheers. One of them, though a federalist, was so disgusted at the partiality shown by Hamilton to a foreign sovereign over his own President, that he mentioned it to a Mr. Schwarthouse, an American merchant of New York, who mentioned it to Smith.

Mr. Smith also tells me, that calling one evening on Mr. Evans, then Speaker of the House of Representatives of Pennsylvania, and asking the news, Evans said Harper had been just there, and speaking of the President's setting out to Braintree, said, "he prayed to God that his horses might run away with him, or some other accident happen to break his neck before he reached Braintree." This was indignation at his having named Murray, &c., to negotiate with France. Evans approved of the wish.

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February the 1st. Doctor Rush tells me that he had it from Asa Green, that when the clergy addressed General Washington on his departure from the Government, it was observed in their consultation, that he had never, on any occasion, said a word to the public which showed a belief in the Christian

religion, and they thought they should so pen their address, as to force him at length to declare publicly whether he was a Christian or not. They did so. However, he observed, the old fox was too cunning for them. He answered every article of their address particularly except that, which he passed over without notice. Rush observes, he never did say a word on the subject in any of his public papers, except in his valedictory letter to the Governors of the States, when he resigned his commission in the army, wherein he speaks of "the benign influence of the Christian religion."

I know that Gouverneur Morris, who pretended to be in his secrets and believed himself to be so, has often told me that General Washington believed no more of that system than he himself did.

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March, 1800. Heretical doctrines maintained in Senate, on the motion against the Aurora. That there is in every legal body of men a right of self-preservation, authorizing them to do whatever is necessary for that purpose: by Tracy, Read, and Lawrence. That the common law authorizes the proceeding proposed against the Aurora, and is in force here: by Read. That the privileges of Congress are and ought to be indefinite: by Read.

Tracy says, he would not say exactly that the common law of England in all its extent is in force here; but common sense, reason and morality,

which are the foundations of the common law, are in force here, and establish a common law. He held himself so nearly half way between the common law of England and what everybody else has called natural law, and not common law, that he could hold to either the one or the other, as he should find expedient.

Dexter maintained that the common law, as to crimes, is in force in the United States.

Chipman says, that the principles of common right are common law.

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March the 11th. Conversing with Mrs. Adams on the subject of the writers in the newspapers, I took occasion to mention that I never in my life had, directly or indirectly, written one sentence for a newspaper; which is an absolute truth. She said that Mr. Adams, she believed, had pretty well ceased to meddle in the newspapers, since he closed the pieces on Davila. This is the first direct avowal of that work to be his, though long and universally understood to be so.

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March the 14th. Freneau, in Charleston, had the printing of the laws in his paper. He printed a pamphlet of Pinckney's letters on Robbins' case. Pickering has given the printing of the laws to the tory paper of that place, though not of half the circulation. The printing amounted to about one hundred dollars a year.

March the 24th. Mr. Perez Morton of Massachusetts tells me that Thatcher, on his return from the war Congress, declared to him he had been for a declaration of war against France, and many others also; but that on counting noses they found they could not carry it, and therefore did not attempt it.

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March the 27th. Judge Breckenridge gives me the following information: He and Mr. Ross were originally very intimate; indeed, he said, he found him keeping a little Latin school, and advised and aided him in the study of law, and brought him forward. After Ross became a Senator, and particularly at the time of the western insurrection, they still were in concert. After the British treaty, Ross, on his return, informed him there was a party in the United States who wanted to overturn the Government, who were in league with France; that France, by a secret article of treaty with Spain was to have Louisiana; and that Great Britain was likely to be our best friend and dependence. On this information, he, Breckenridge, was induced to become an advocate for the British treaty. During this intimacy with Ross, he said, that General Collot, in his journey to the western country, called on him, and he frequently led Breckenridge into conversations on their grievances under the Government, and particularly the western expedition; that he spoke to him of the advantages that country

would have in joining France when she should hold Louisiana; showed him a map he had drawn of that part of the country; pointed out the passes in the mountain, and the facility with which they might hold them against the United States, and with which France could support them from New Orleans. He said, that in these conversations, Collot let himself out with common prudence. He said, Michaud, (to whom I, at the request of Genet, had given a letter of introduction to the Governor of Kentucky as a botanist, which was his real profession,) called on him; that Michaud had a commissary's commission for the expedition, which Genet had planned from that quarter against the Spaniards; that ———, the late Spanish commandant of St. Genevieve, with one Powers, an Englishman, called on him. That from all these circumstances, together with Ross's stories, he did believe that there was a conspiracy to deliver our country, or some part of it at least, to the French; that he made notes of what passed between himself and Collot and the others, and lent them to Mr. Ross, who gave them to the President, by whom they were deposited in the office of the Board of War; that when he complained to Ross of this breach of confidence, he endeavored to get off by compliments on the utility and importance of his notes. They now cooled towards each other; and his opposition to Ross's election as Governor has separated them in truth, though not entirely to appearance.

Doctor Rush tells me, that within a few days he has heard a member of Congress lament our separation from Great Britain, and express his sincere wishes that we were again dependent on her.

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December the 25th, 1800. Colonel Hitchburn tells me what Col. Monroe had before told me of, as coming from Hitchburn. He was giving me the characters of persons in Massachusetts. Speaking of Lowell, he said he was, in the beginning of the Revolution, a timid whig, but as soon as he found we were likely to prevail, he became a great office hunter. And in the very breath of speaking of Lowell, he stopped: said he, I will give you a piece of information which I do not venture to speak of to others. There was a Mr. Hale in Massachusetts, a reputable, worthy man, who becoming a little embarrassed in his affairs, I aided him, which made him very friendly to me. He went to Canada on some business. The Governor there took great notice of him. On his return, he took occasion to mention to me that he was authorized by the Governor of Canada to give from three to five thousand guineas each to himself and some others, to induce them, not to do anything to the injury of their country, but to befriend a good connection between England and it. Hitchburn said he would think of it, and asked Hale to come and dine with him tomorrow. After dinner he drew Hale fully out. He

told him he had his doubts, but particularly, that he should not like to be alone in such a business. On that, Hale named to him four others who were to be engaged, two of whom, said Hitchburn, are now dead, and two living. Hitchburn, when he had got all he wanted out of Hale, declined in a friendly way. But he observed those four men, from that moment, to espouse the interests of England in every point and on every occasion. Though he did not name the men to me, yet as the speaking of Lowell was what brought into his head to tell me this anecdote, I concluded he was one. From other circumstances respecting Stephen Higginson, of whom he spoke, I conjectured him to be the other living one.

December the 26th. In another conversation, I mentioned to Colonel Hitchburn, that though he had not named names, I had strongly suspected Higginson to be one of Hale's men. He smiled and said, if I had strongly suspected any man wrongfully from his information, he would undeceive me; that there were no persons he thought more strongly to be suspected himself, than Higginson and Lowell. I considered this as saying they were the men. Higginson is employed in an important business about our navy.

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February the 12th, 1801. Edward Livingston tells me, that Bayard applied to-day or last night to

General Samuel Smith, and represented to him the expediency of his coming over to the States who vote for Burr, that there was nothing in the way of appointment which he might not command, and particularly mentioned the Secretaryship of the Navy. Smith asked him if he was authorized to make the offer. He said he was authorized. Smith told this to Livingston, and to W. C. Nicholas who confirms it to me. Bayard in like manner tempted Livingston, not by offering any particular office, but by representing to him his, Livingston's, intimacy and connection with Burr; that from him he had everything to expect, if he would come over to him.

To Doctor Linn of New Jersey, they have offered the government of New Jersey. See a paragraph in Martin's Baltimore paper of February the 10th, signed, "A LOOKER ON," stating an intimacy of views between Harper and Burr.

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February the 14th. General Armstrong tells me, that Gouverneur Morris, in conversation with him to-day on the scene which is passing, expressed himself thus. "How comes it," said he, "that Burr who is four hundred miles off, (at Albany,) has agents here at work with great activity, while Mr. Jefferson, who is on the spot, does nothing?" This explains the ambiguous conduct of himself and his nephew, Lewis Morris, and that they were holding themselves free for a prize; *i. e.*, some office, either to the uncle or nephew.

February the 16th. See in the Wilmington Mirror of February the 14th, Mr. Bayard's elaborate argument to prove that the common law, as modified by the laws of the respective States at the epoch of the ratification of the Constitution, attached to the courts of the United States.

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June the 23d, 1801. Andrew Ellicot tells me, that in a conversation last summer with Major William Jackson of Philadelphia, on the subject of our intercourse with Spain, Jackson said we had managed our affairs badly; that he himself was the author of the papers against the Spanish ministers signed Americanus; that his object was irritation; that he was anxious, if it could have been brought about, to have plunged us in a war with Spain, that the people might have been occupied with that, and not with the conduct of the Administration, and other things they had no business to meddle with.

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December the 13th, 1803. The Reverend Mr. Coffin of New England, who is now here soliciting donations for a college in Greene county, in Tennessee, tells me that when he first determined to engage in this enterprise, he wrote a paper recommendatory of the enterprise, which he meant to get signed by clergymen, and a similar one for persons in a civil character, at the head of which he wished Mr. Adams to put his name, he being then President, and the

application going only for his name, and not for a donation. Mr. Adams, after reading the paper and considering, said, "he saw no possibility of continuing the union of the States; that their dissolution must necessarily take place; that he therefore saw no propriety in recommending to New England men to promote a literary institution in the south; that it was in fact giving strength to those who were to be their enemies; and, therefore, he would have nothing to do with it."

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December the 31st. After dinner to-day, the pamphlet on the conduct of Colonel Burr being the subject of conversation, Matthew Lyon noticed the insinuations against the republicans at Washington, pending the Presidential election, and expressed his wish that everything was spoken out which was known; that it would then appear on which side there was a bidding for votes, and he declared that John Brown of Rhode Island, urging him to vote for Colonel Burr, used these words: "What is it you want, Colonel Lyon? Is it office, is it money? Only say what you want, and you shall have it."

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January the 2d, 1804. Colonel Hitchburn of Massachusetts, reminding me of a letter he had written me from Philadelphia, pending the Presidential election, says he did not therein give the details. That he was in company at Philadelphia with Colonel

Burr and * * * * * * * * * that in the course of the conversation on the election, Colonel Burr said, "we must have a President, and a constitutional one, in some way." "How is it to be done," said Hitchburn; "Mr. Jefferson's friends will not quit him, and his enemies are not strong enough to carry another." "Why," said Burr, "our friends must join the federalists, and give the President." The next morning at breakfast, Colonel Burr repeated nearly the same, saying, "we cannot be without a President, our friends must join the federal vote." "But," said Hitchburn, "we shall then be without a Vice-President; who is to be our Vice President?" Colonel Burr answered, "Mr. Jefferson."

### CONVERSATIONS WITH AARON BURR.

January the 26th. Colonel Burr, the Vice-President, calls on me in the evening, having previously asked an opportunity of conversing with me. He began by recapitulating summarily, that he had come to New York a stranger, some years ago; that he found the country in possession of two rich families (the Livingstons and Clintons); that his pursuits were not political, and he meddled not. When the crisis, however, of 1800 came on, they found their influence worn out, and solicited his aid with the people. He lent it without any views of promotion. That his being named as a candidate for Vice-President was unexpected by him. He

acceded to it with a view to promote my fame and advancement, and from a desire to be with me, whose company and conversation had always been fascinating to him. That since, those great families had become hostile to him, and had excited the calumnies which I had seen published. That in this Hamilton had joined, and had even written some of the pieces against him. That his attachment to me had been sincere, and was still unchanged, although many little stories had been carried to him, and he supposed to me also, which he despised; but that attachments must be reciprocal or cease to exist, and therefore he asked if any change had taken place in mine towards him; that he had chosen to have this conversation with myself directly, and not through any intermediate agent. He reminded me of a letter written to him about the time of counting the votes, (say February, 1801,) mentioning that his election had left a chasm in my arrangements; that I had lost him from my list in the Administration, &c. He observed, he believed it would be for the interest of the republican cause for him to retire; that a disadvantageous schism would otherwise take place; but that were he to retire, it would be said he shrunk from the public sentence, which he never would do; that his enemies were using my name to destroy him, and something was necessary from me to prevent and deprive them of that weapon, some mark of favor from me which would declare to the world that he retired with my confidence.

I answered by recapitulating to him what had been my conduct previous to the election of 1800. That I had never interfered directly or indirectly with my friends or any others, to influence the election either for him or myself; that I considered it as my duty to be merely passive, except that in Virginia, I had taken some measures to procure for him the unanimous vote of that State, because I thought any failure there might be imputed to me. That in the election now coming on, I was observing the same conduct, held no councils with anybody respecting it, nor suffered any one to speak to me on the subject, believing it my duty to leave myself to the free discussion of the public; that I do not at this moment know, nor have ever heard, who were to be proposed as candidates for the public choice, except so far as could be gathered from the newspapers. That as to the attack excited against him in the newspapers, I had noticed it but as the passing wind; that I had seen complaints that Cheetham, employed in publishing the laws, should be permitted to eat the public bread and abuse its second officer; that as to this, the publishers of the laws were appointed by the Secretary of the State, without any reference to me; that to make the notice general, it was often given to one republican and one federal printer of the same place; that these federal printers did not in the least intermit their abuse of me, though receiving emoluments from the governments and that I have never thought it proper to interfere for myself,

and consequently not in the case of the Vice-President. That as to the letter he referred to, I remembered it, and believed he had only mistaken the date at which it was written; that I thought it must have been on the first notice of the event of the election of South Carolina; and that I had taken that occasion to mention to him, that I had intended to have proposed to him one of the great offices, if he had not been elected; but that his election in giving him a higher station had deprived me of his aid in the Administration.

The letter alluded to was, in fact, mine to him of December the 15th, 1800. I now went on to explain to him verbally, what I meant by saying I had lost him from my list. That in General Washington's time, it had been signified to him that Mr. Adams, the Vice-President, would be glad of a foreign embassy; that General Washington mentioned it to me, expressed his doubts whether Mr. Adams was a fit character for such an office, and his still greater doubts, indeed his conviction, that it would not be justifiable to send away the person who, in case of his death, was provided by the Constitution to take his place; that it would moreover appear indecent for him to be disposing of the public trusts, in apparently buying off a competitor for the public favor. I concurred with him in the opinion, and, if I recollect rightly, Hamilton, Knox, and Randolph were consulted and gave the same opinions. That when Mr. Adams came to the Administration, in his first

interview with me, he mentioned the necessity of a mission to France, and how desirable it would have been to him if he could have got me to undertake it; but that he conceived it would be wrong in him to send me away, and assigned the same reasons General Washington had done; and therefore, he should appoint Mr. Madison, &c. That I had myself contemplated his (Colonel Burr's) appointment to one of the great offices, in case he was not elected Vice-President; but that as soon as that election was known, I saw it could not be done, for the good reasons which had led General Washington and Mr. Adams to the same conclusion; and therefore, in my first letter to Colonel Burr, after the issue was known, I had mentioned to him that a chasm in my arrangements had been produced by this event. I was thus particular in rectifying the date of this letter, because it gave me an opportunity of explaining the grounds on which it was written, which were, indirectly, an answer to his present hints. He left the matter with me for consideration, and the conversation was turned to indifferent subjects.

I should here notice, that Colonel Burr must have thought that I could swallow strong things in my own favor, when he founded his acquiescence in the nomination as Vice-President, to his desire of promoting my honor, the being with me, whose company and conversation had always been fascinating with him, &c. I had never seen Colonel Burr till he came as a member of Senate. His conduct very

soon inspired me with distrust. I habitually cautioned Mr. Madison against trusting him too much. I saw afterwards, that under General Washington's and Mr. Adams' administrations, whenever a great military appointment or a diplomatic one was to be made, he came post to Philadelphia to show himself, and in fact that he was always at market, if they had wanted him. He was indeed told by Dayton in 1800, he might be Secretary of War; but this bid was too late. His election as Vice-President was then foreseen. With these impressions of Colonel Burr, there never had been an intimacy between us, and but little association. When I destined him for a high appointment, it was out of respect for the favor he had obtained with the republican party, by his extraordinary exertions and successes in the New York election in 1800.

April the 15th, 1806. About a month ago, Colonel Burr called on me, and entered into a conversation, in which he mentioned, that a little before my coming into office, I had written to him a letter intimating that I had destined him for a high employ, had he not been placed by the people in a different one; that he had signified his willingness to resign as Vice-President, to give aid to the Administration in any other place; that he had never asked an office, however; he asked aid of nobody, but could walk on his own legs and take care of himself; that I had always used him with politeness, but nothing more;

that he aided in bringing on the present order of things; that he had supported the administration; and that he could do me much harm; he wished, however, to be on different ground; he was now disengaged from all particular business—willing to engage in something—should be in town some days, if I should have anything to propose to him. I observed to him, that I had always been sensible that he possessed talents which might be employed greatly to the advantage of the public, and that as to myself, I had a confidence that if he were employed, he would use his talents for the public good; but that he must be sensible the public had withdrawn their confidence from him, and that in a government like ours it was necessary to embrace in its administration as great a mass of public confidence as possible, by employing those who had a character with the public, of their own, and not merely a secondary one through the executive. He observed, that if we believed a few newspapers, it might be supposed he had lost the public confidence, but that I knew how easy it was to engage newspapers in anything. I observed, that I did not refer to that kind of evidence of his having lost the public confidence, but to the late Presidential election, when, though in possession of the office of Vice-President, there was not a single voice heard for his retaining it. That as to any harm he could do me, I knew no cause why he should desire it, but, at the same time, I feared no injury which any man

could do me; that I never had done a single act, or been concerned in any transaction, which I feared to have fully laid open, or which could do me any hurt, if truly stated; that I had never done a single thing with a view to my personal interest, or that of any friend, or with any other view than that of the greatest public good; that, therefore, no threat or fear on that head would ever be a motive of action with me. He has continued in town to this time; dined with me this day week, and called on me to take leave two or three days ago.

I did not commit these things to writing at the time, but I do it now, because in a suit between him and Cheetham, he has had a deposition of Mr. Bayard taken, which seems to have no relation to the suit, nor to any other object than to calumniate me. Bayard pretends to have addressed to me, during the pending of the Presidential election in February, 1801, through General Samuel Smith, certain conditions on which my election might be obtained, and that General Smith, after conversing with me, gave answers from me. This is absolutely false. No proposition of any kind was ever made to me on that occasion by General Smith, nor any answer authorized by me. And this fact General Smith affirms at this moment.

For some matters connected with this, see my notes of February the 12th and 14th, 1801, made at the moment. But the following transactions took place about the same time, that is to say, while the

Presidential election was in suspense in Congress, which, though I did not enter at the time, they made such an impression on my mind, that they are now as fresh, as to their principal circumstances, as if they had happened yesterday. Coming out of the Senate chamber one day, I found Gouverneur Morris on the steps. He stopped me, and began a conversation on the strange and portentous state of things then existing, and went on to observe, that the reasons why the minority of States was so opposed to my being elected, were, that they apprehended that, 1, I would turn all federalists out of office; 2, put down the navy; 3, wipe off the public debt. That I need only to declare, or authorize my friends to declare, that I would not take these steps, and instantly the event of the election would be fixed. I told him, that I should leave the world to judge of the course I meant to pursue by that which I had pursued hitherto, believing it to be my duty to be passive and silent during the present scene; that I should certainly make no terms; should never go into the office of President by capitulation, nor with my hands tied by any conditions which should hinder me from pursuing the measures which I should deem for the public good. It was understood that Gouverneur Morris had entirely the direction of the vote of Lewis Morris of Vermont, who, by coming over to Matthew Lyon, would have added another vote, and decided the election. About the same time, I called on Mr. Adams. We

conversed on the state of things. I observed to him, that a very dangerous experiment was then in contemplation, to defeat the Presidential election by an act of Congress declaring the right of the Senate to name a President of the Senate, to devolve on him the government during any interregnum; that such a measure would probably produce resistance by force, and incalculable consequences, which it would be in his power to prevent by negativing such an act. He seemed to think such an act justifiable, and observed, it was in my power to fix the election by a word in an instant, by declaring I would not turn out the federal officers, nor put down the navy, nor spunge the national debt. Finding his mind made up as to the usurpation of the government by the President of the Senate, I urged it no further, observed the world must judge as to myself of the future by the past, and turned the conversation to something else. About the same time, Dwight Foster of Massachusetts called on me in my room one night, and went into a very long conversation on the state of affairs, the drift of which was to let me understand, that the fears above mentioned were the only obstacle to my election, to all of which I avoided giving any answer the one way or the other. From this moment he became most bitterly and personally opposed to me, and so has ever continued. I do not recollect that I ever had any particular conversation with General Samuel Smith on this subject. Very possibly I had,

## The White House, with Jefferson's Statue

The White House, with Statue of Thomas Jefferson in the foreground, as it appeared before removal of the Statue to the Rotunda of the Capitol. Reproduced from an Old Engraving.

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however, as the general subject and all its parts were the constant themes of conversation in the private tête-à-têtes with our friends. But certain I am, that neither he nor any other republican ever uttered the most distant hint to me about submitting to any conditions, or giving any assurances to anybody, and still more certainly, was neither he nor any other person ever authorized by me to say what I would or would not do. * * *

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CABINET MEETINGS.

April the 25th. Present all the members of the Cabinet. All the articles of a treaty in *maximo* and *minimo*, were agreed to without a single dissent on any article, the former instructions of Monroe were made the ground work.

It was proposed to consider whether any measures should be taken under the act for detaching 100,000 militia. It was agreed not on the following grounds: 1. It would spread considerable alarm through the country. 2. If New Orleans (the only place to which danger is apprehended) be really attacked, succor from this act is doubtful, if not desperate. 3. The language of Spain is entirely pacific according to the last letters from Erving.[1] 4. Were she disposed to send troops across the Atlantic, she could not do it in the present posture of things on the ocean. 5. At Havana they have scarcely any

[1] G. W. Erving was secretary of Legation to Spain at that time.

troops—certainly none to spare, at Pensacola and Mobile about 600. Baton Rouge 170. 6. In New Orleans we have 200, and in the vicinities which may be drawn there in a few days 1,000 more. The militia of New Orleans may be counted on from 500 to 1,000, and the seamen about as many more: so that an effective force of about 3,000 may be relied on. We conclude therefore to adopt the following measures:

1. The gunboats (eight in number) up the Ohio not being ready, order the two bomb vessels and two gunboats built by Commodore Preble to proceed immediately to Charleston, there take gunboat No. 1 and go on, the three gunboats to Lake Pontchartrain and the two Bombs to New Orleans where the men and stores for them have been some time arrived. The rest of the gunboats from the Mediterranean being daily expected at Charleston or Savanna, if they arrive before those from the Ohio come down, order No. 4 to New Orleans, because we consider six for the Mississippi and three for the lakes sufficient, and when the Ohio boats come down the surplus may be brought off to the Atlantic ports. The gunboats are depended on to guard the passage through the lakes from the quarter of Mobile, to guard the entrance of the mouth of the river from the sea, and to guard the crossing of it at the Acadian settlement should troops approach from Nacogdoches and westward across the Chataleya along the road to the Acadian settlement.

2. Block houses and other defensive works are immediately to be prepared on the neck of the land along which the approach lays from Baton Rouge and Manshac; at Fort St. Jean, and the most advantageous defiles on the approaches from the Eastward; the troops remaining in the vicinities as at present on account of their health.

3. The militia of New Orleans, Tombigbee, and Natchez to be kept in readiness, those of New Orleans for its own defense, those of Tombigbee to seize Mobile or Pensacola if their garrisons be drawn off to New Orleans, or to follow on their rear; and those of Natchez to take Baton Rouge, if the garrison be drawn, or to follow and cut off their retreat.

There was no dissent to any article of this plan.

May the 1st. Present the four Heads of Departments. A letter from the mayor of New York complaining of the murder lately committed, and the trespasses by the Leander, Cambrian and Driver, and asking for a naval force, also the depositions of Pierce and ———. It was considered that the laws had made an establishment of 900 men for the navy in peace, with power to employ them in any vessels we thought proper; that these might man three frigates, that if it would have been thought proper with three frigates to attack and drive off these three British vessels, yet that two of the three were absent in the Mediterranean, and the third hove down; the latter not to be in readiness under

a month, and one of the former not possible to be called home under five months, that for so distant and uncertain effect the defense of our commerce in the Mediterranean ought not to be abandoned, that our gunboats were not as yet in place to be stationed in New York and that therefore no force of either of these descriptions were within our power. It was thought proper therefore to recommend a regular prosecution of the murder[1] by the state courts of New York or New Jersey if within their jurisdiction, or, if out of it, then by the district court of the United States, and to issue a proclamation for apprehending Henry (?) Whitby, commander of the Leander, for the murder, requiring the three vessels to depart, and interdicting them and all other vessels commanded by the present captains of the Cambrian and Driver from the harbors and waters of the United States, and on their failure to depart, or reentering them, to prohibit all intercourse, see the proclamation which was communicated and approved by each of the gentlemen. In all this there was no difference of opinion except that General Dearborne thought we might hold out some promise of naval defense to New York.

On the prosecution of Ogden and Smith for participating in Miranda's expedition the defense and their friends having contrived to make it a government question, in which they mean to have the

[1] A man on a sloop had been killed by a shot fired from the cruiser Leander.

Administration and judge tried as the culprits instead of themselves, Swartwout, the marshal, to whom, in his duel with Clinton, Smith was second, and is bosom friend, summoned a panel of jurors, the greater part of which were of the bitterest federalists; his letter, too, covering to a friend a copy of Aristides and affirming that every fact in it was true as holy writ. Determined unanimously that he be removed.

July the 11th. Consultation with the Secretary of the Navy, nine gunboats built in the United States, and two gunboats bought in the Mediterranean, with two Bombs built in the United States, and two Bombs bought in the Mediterranean, and three of our brigs, etc., are daily expected to arrive from the Mediterranean, two of the brigs to come here, and all the other vessels to Charleston. As everything at New Orleans is now quiet, and therefore not pressing we conclude to depend on the eight gunboats built in the Ohio to be in New Orleans in time, and to join to these by an immediate order one of Preble's gunboats, and one of his bombs, this will make up the nine Gunboats agreed on April 25th for the Mississippi and Pontchartrain, with the addition of the bomb, two of the gunboats at Charleston, three shall remain there, three others of them + No 1 (not fit for that place) shall go to Norfolk, six others of them + the other of Preble's gunboats shall go to New York, one boat only how-

ever is to be kept manned at each place, the rest to be hauled up. Preble's other Bomb, the four bombs from the Mediterranean, and all the other brigs, etc., from the Mediterranean to come here to be laid out.

July the 19th. Consultation with the Heads of Departments. An armed vessel at Norfolk fitting out by Cooper to cruise as a Spanish or French privateer to be seized and placed under a course of law, she is complained of by Mr. Merry.[1] Officer to be indemnified. Yrujo—agreed to do nothing as yet. Mr. Madison seemed of a different opinion.

One gunboat to be kept in service at Charleston and to act against privateers under former instructions, if the appropriation will afford it.

The frigate under Campbell in the Mediterranean to remain there till next spring.

Here General Dearborne was called away.

Swartwout, if the case versus Ogden and Smith is determined at the present session he is to be removed immediately, if it lies over to another term let him remain to another.

October the 22nd. Present the four Heads of Departments. The Spaniards have moved to Bayou Pierre a body of 1,000 or 1,200 men, mostly militia, mounted, and 300 regulars are expected to join them. Our regular force in the Mississippi and Orleans

[1] Merry was the name of the British Minister.

territories is 631 men at Natchitoches and ordered there from Fort Adams, 210. At New Orleans, 240 new recruits arrived or arriving at Orleans, making in all 1,081, besides 130 at Tombigby. Two gunboats are at New Orleans (from Ohio) six more daily expected from the same quarter. Two others and two bomb vessels from Boston are arriving there about this time, and General Wilkinson asks 500 mounted men to secure his operations if forced to act hostilely, the acting governor of Mississippi offers 250 volunteers for service on the west side of the Mississippi, and 500 if employed on the east side; the Governor of Orleans counts on 500 militia from the western countries of his territories. Agreed unanimously to require from those two territories 500 volunteers mounted on their own horses, engaged to serve six months, and to be in readiness when called for by the commanding officer of the regulars. This under the law of the last session for calling out a detachment of militia, and further that the marines at New Orleans shall do garrison duty there, so that the 210 men at that place may be moved up to Natchitoches, the gunboats to be under the orders of the commanding officer.

During the last session of Congress, Colonel Burr who was here, finding no hope of being employed in any department of the Government opened himself confidentially to some persons on whom he thought he could rely, on a scheme of separating the Western from the Atlantic States, and erecting

the former into an independent confederacy; he had before made a tour of those states, which had excited suspicions, as every motion does of such a Catalinarian character; of his having made this proposition here we have information from General Eaton, through Mr. Ely and Mr. Granger; he went off this spring to the western country. Of his movements on his way information has come to the Secretary of State and myself from John Nicholson and Mr. Williams of the State of New Jersey, respecting a Mr. Tyler, Colonel Morgan, Nevill and Roberts near Pittsburg, and to other citizens through other channels and the newspapers. We are of opinion unanimously that confidential letters be written to the Governors of Ohio, Indiana, Mississippi and Orleans, to the district attorney of Kentucky, ——— of Tennessee, ——— of Louisiana, to have him strictly watched and on his committing any overt act unequivocally, to have him arrested and tried for treason, misdemeanor, or whatever other offense the act may amount to. And in like manner to arrest and try any of his followers committing acts against the laws. We think it proper also to order some of the gunboats up to Fort Adams to stop by force any passage of suspicious persons going down in force.

General Wilkinson being expressly declared by Burr to Eaton to be engaged with him in this design as his lieutenant or first in command, and suspicions of infidelity in Wilkinson being now become

very general, a question is proposed what is proper to be done as to him on this account as well as for his disobedience of orders received by him June 11th, at St. Louis, to descend with all practicable despatch to New Orleans to mark out the site of certain defensive works there, and then repair to take command at Natchitoches, on which business he did not leave St. Louis till Sept.—— . Consideration adjourned.

October the 24th. It is agreed unanimously to call for Captains Preble and Decatur to repair to New Orleans by land or sea as they please, there to take command of the forces on the water, and that the Argus, and two gunboats from New York, three from Norfolk and two from Charleston shall be ordered there, if on a consultation between Mr. Gallatin and Mr. Smith the appropriations shall be found to enable us. That Preble shall, on consultation with Governor Claiborne have great discretionary powers. That Graham shall be sent through Kentucky on Burr's trail, with discretionary powers to consult with the Governors, and to arrest Burr if he has made himself liable. He is to have a commission of Governor of Louisiana, and Doctor Browne is to be removed, letters are to be written by post to Governor Claiborne, the Governor of Mississippi and Colonel Freeman to be on their guard against any surprise of our ports or vessels by him. The question as to General Wilkinson

postponed till Preble's departure, for further information.

October the 25th. A mail arrived yesterday from the Westward, and not one word is heard from that quarter of any movements by Colonel Burr. This total silence of the officers of the Government, of the members of Congress, of the newspapers, proves he is committing no overt act against law. We therefore rescind the determination to send Preble, Decatur, the Argus or the gunboats, and instead of them send off the marines, which are here to reinforce or take the place of the garrison at New Orleans with a view to Spanish operations, and instead of writing to the Governors, etc., we send Graham on that rout with confidential authority to enquire into Burr's movements, put the Governors, etc., on their guard, to provide for his arrest if necessary, and to take on himself the Government of Louisiana. Letters are still to be written to Claiborne, Freeman, and the Governor of Mississippi to be on their guard.

November the 8th. Present the four Heads of Departments, agreed on instructions to General Wilkinson, which see.

November the 25th. Present at first the four Heads of Departments, but after a while General Dearborne withdrew, unwell. Dispatches from Gen-

eral Wilkinson to myself of October 21st by a confidential officer (Lt. Smith) show that overtures have been made to him which decide that the present object of the combination[1] is an expedition by sea against Vera Cruz: and by comparing the contents of a letter from Cowles Meade to the Secretary of State, with the information from Lt. Smith that a Mr. Swartwout from New York, brother of the late Marshal, had been at General Wilkinson's camp, we are satisfied that Swartwout has been the agent through whom overtures have been made to Wilkinson. We came to the following determination: that a proclamation be issued (see it) and that orders go as follows to Pittsburg, if we have a military officer there, write to him to be vigilant in order to discover whether there are any preparations making, or boats or arms or other military stores or means providing by any persons against whom there is reasonable ground to suspect that they have in contemplation a military enterprise against any of the territories of Spain (contrary to the Stat. June 5, 94. c. 50), and to stop all bodies of armed men who may be assembled to descend the Ohio under circumstances and appearances so different from those of common emigrants as to induce a reasonable suspicion that they are a part of a combination of persons believed to have such an enterprise in view, to have them bound to the observance of the peace and good

[1] Referring to Aaron Burr's "Conspiracy," for which he was tried in 1807, and acquitted after a long trial.

behavior, or put in a course of legal prosecution, according to the strength of the evidence; and for this purpose to call in the aid of the militia;—if we have no officer there, then write to General Nevill. —Marietta. Mr. Gallatin is to write to the Collector to proceed to seize the gunboats building in that neighborhood and suspected to be destined for this enterprise, and to call in the aid of the militia. General Dearborne to write to Governor Tiffin to furnish a guard of militia, sufficient for the detention of the boats, and to write to General Jackson, supposed to be the General of the Brigade on the Virginia side of the river, to furnish any aid of militia which may be necessary from the left bank of the river. —Louisville. General Dearborne to write to the Governor of Kentucky of the same tenor as to the officer at Pittsburg. —Massac. General Dearborne to give orders to Captain Bissel of the same tenor, and particularly to stop armed vessels suspected on good grounds to be proceeding on this enterprise and for this purpose to have in readiness any boats he can procure, fitted for enabling him to arrest their passage. —Chickasaw Bluffs. Give same orders as to Bissel. —Fort Adams. Give same orders as to Bissel. —New Orleans. General Wilkinson to direct the stations of the armed vessels, and if the arrangements with the Spaniards will permit him to withdraw, let him dispose of his force as he thinks best to prevent any such expedition, or any attempt on New Orleans, or any of the

posts or military stores of the United States. (He is also to arrest persons coming to his camp and proposing a concurrence in any such enterprise, or suspected of being in camp with a view to propagate such propositions), this addition is made by General Dearborne with my approbation.

December the 15th. See a message agreed on unanimously to furnish money for distressed French —not sent; Turreau withdrawing request.

December the 16th. Present the four Heads of Departments, being informed that the Cambrian, one of the vessels proscribed by the proclamation of May last, is in Hampton road, we agreed to issue the proclamation, which see, dated December 20th, to write to Generals Matthews and Wells to furnish militia for cutting off supplies, and to order the revenue cutters and boats, and the gunboats at Norfolk under Captain Decatur to attend to the same: but first to inform Mr. Erskine[1] of what is to be done, and detain our orders some days to give time for the effect of his interference. The papers were to have gone off on the 20th, but that morning he informed Mr. Madison the Cambrian was gone—so our orders and proclamation were suppressed, see the draught of the proclamation.

December the 19th. Present the Heads of Departments (except Mr. Gallatin). See an unfin-

[1] Baron Erskine (David Montague) was British Minister to the United States, 1806–1810.

ished letter of December 20th to Governor Claiborne, containing the sum of the orders agreed to be sent.

February the 2nd, 1807. Present the Heads of Departments and Attorney General, letters having been received from our Ministers in London of November 11th, informing that they were likely to settle satisfactorily the great points of colonial commerce (indirect) blockade, jurisdiction, commerce on footing *gentis amicissimae*. East India the same, on that of Jay's treaty, but that the right of taking their seamen out of our vessels at sea (which in its exercise took ours also) would not be given up by treaty though moderated in practice, and that our commanders meant to conclude such an one, I propose these questions.

1. Shall we agree to any treaty yielding the principle of our non-importing act, and not securing us against impressments? Unanimously not. Because it would be yielding the only peaceable instrument for coercing all our rights. The points they yield are all matters of right. They are points which Bonaparte and Alexander will concur in settling at the treaty of peace, and probably in more latitude than Great Britain would now yield them to us, and our treaty would place on worse ground as to them than will be settled for Europe. The moment is favorable for making a stand and they will probably yield and the more probably as their negotiators had agreed to an article that they would not impress

on the high seas, or in any other than their own ports; which had once before been agreed to with Mr. King,[1] but retracted in both cases. We had better have no treaty than a bad one. It will not restore friendship, but keep us in a state of constant irritation.

2. Shall we draw off in hostile attitude, or agree formally that there shall be an understanding between us that we will act in practice on the very principles proposed by the treaty (except as to the East India commerce), they defining what breaks the continuity of a voyage, blockades, jurisdiction, etc., and we agreeing to recommend to Congress to continue the supervision of the non-importing?—the last mode decided unanimously.

Art. 3. Shall we consult the Senate? unanimously not, had the first question been decided affirmatively their advice should have been asked. Mr. Madison was not satisfied whether we ought not to propose giving up the right of employing their seamen at all in our vessels, and making it penal on our commanders, as an inducement to them to give up impressment and trust to the effect of such a law for securing to them the use of all their seamen, our commanders are to be immediately instructed to adhere to their original instructions which made the impressment a *sine qua non*.

February the 27th. Present Madison, Dearborne, Smith, Rodney, agreed to discharge all the militia

[1] Rufus King was Minister to England 1796 to 1804.

at the stations from the mouth of Cumberland upwards, to give up all boats and provisions seized (except Blannerhasset's) or pay the value, applying them in that case to public use; to institute an inquiry into the proceedings of Burr and his adherents from New York to New Orleans, and particularly to appoint good men at the following points: Pittsburg, Marietta, Wood County, Cincinnati, Louisville, Nashville, Vincennes, St. Louis, Natchez, New Orleans, Statesburg, City of Washington, Philadelphia, New York, and other points in that State, to take affidavits. The Attorney General to prepare interrogatories, the vessels in the Mediterranean to be relieved, the Act for 30,000 volunteers, to be committed to Governors of Western States for execution.

The Arkansa to be explored.

March the 17th. Present all. British treaty—agreed that the article against impressment shall be a *sine qua non* according to our instrument of February 3rd. So also the withdrawing the declaration respecting the French decree of blockade or the modifying it so as not to affect the treaty, and as the treaty is opened for these purposes, endeavor to alter the following articles, 1. East India trade, restore Jay's articles. 2. Keep the one now in. 3. Expunge it, but on this head we are to enquire of merchants before we send the instrument. Art. 8. Avoid if possible the express abandonment of free

ships free goods. Art. 10. Have blockade defined according to the British note formerly received. Art. 17. Expunge, stipulation to receive their vessels of war, and especially the humiliating stipulation to treat their officers with respect, reserve the right to indemnifications—absolutely forbid the proposed Convention for giving them a right to trade with the Indians of Louisiana. Art. 5. Tonnage, etc., consult with merchants.

A circular letter to the Governors, etc., for carrying the volunteer act in execution was agreed on.

Persons were named for conducting enquiries into Burr's treasons, etc., and his associates, and Newark and Trenton in Jersey, and Newport in Kentucky were added.

It was agreed that the seamen employed at New Orleans were to be considered and paid as militia at militia prices, and that the surplus pay stipulated to them should be paid out of the Navy funds.

April the 3rd. Present the four Heads of Departments. Agreed to propose to Great Britain not to employ any of her seamen on her stipulating not to impress from our ships, to endeavor to make the article for indirect colonial commerce coextensive in time with the duration of the treaty, agreed also to admit them under the former treaty to pay no more duty on Indian goods imported by the lakes than we take from our own people, on obtaining from them an acknowledgement of our right to extend

the regulation, of Indian commerce within our limits to their traders as well as our own, as is the case with commerce in general in Atlantic States.

The enquiry into Burr's conspiracy to be begun by the Attorney General immediately.

July the 2nd. Present all the Heads of Department and Attorney General. The Proclamation of this day unanimously agreed to.[1]

A copy of the proclamation to be enclosed to the Governors.

Recall all our vessels from the Mediterranean, by a vessel to be sent express.

Send the Revenge to England, with despatches to our Minister, demanding satisfaction for the attack on the Chesapeake, in which must be included. 1. A disavowal of the Act and of the principle of searching a public armed vessel. 2. A restoration of the men taken. 3. A recall of Admiral Barclay. Communicate the incident which has happened to Russia. Orders had been already issued for a court of enquiry on Barron. The vessels recalled from the Mediterranean are to come to Boston. When may be further orders.

July the 4th. Present the same. Agreed that a call of Congress shall issue the fourth Monday of August (24th) to meet the fourth Monday in Octo-

[1] Which was to the effect that all armed English ships leave the United States' ports. This proclamation was provoked by the Chesapeake-Leopard affair.

ber (26th) unless new occurrences should render an earlier call necessary. Mr. Smith wished an earlier call.

July the 5th. Present the same. It was agreed to call on the Governors of the States to have their quotas of 100,000 militia in readiness. The object is to have the portions on the sea-coast ready for any emergency, and for those in the North we may look to a winter expedition against Canada.

July the 7th. Present the Secretaries of State and Navy and Attorney General. Agreed to desire Governor of Virginia to order such portion of Militia into actual service as may be necessary for defense of Norfolk, and of the gunboats at Hampton and in Matthews County.

July the 26th. Norfolk. Agreed that all the militia at this place, and on both sides of the James river be dismissed, except: 1. An artillery company to serve the spare guns at Norfolk, and to be trained to their management. 2. A troop of cavalry to patrole the country in the vicinity of the squadron, as well to cut off their supplies as to give notice of any sudden danger: to meet which the militia of the borough and neighboring counties must hold themselves in readiness to march at a moment's warning, a major to command the two companies of artillery and cavalry. Offensive measures.

Prepare all necessaries for an attack of Upper

Canada and the upper part of Lower Canada, as far as the mouth of Richlieu river.

Prepare also to take possession of the islands of Campobello, etc., in the bay of Passamaquoddy.

The points of attack in Canada to be—1. Detroit, 2. Niagara, 3. Kingston, 4. Montreal.

| | | |
|---|---|---|
| 1. Detroit. | 300 | militia of Michigan. |
| | 1000 | " from the State of Ohio. |
| | 100 | regulars from forts Detroit, Fort Wayne. |
| | 1400 | |
| 2. Niagara. | 1500 | militia from Pennsylvania and Genesee. |
| | | One artillery company of regulars from Niagara. |
| | 1500 | |
| 3. Kingston. | 1500 | militia from New York. |
| | 1500 | |
| 4. Montreal. | 1500 | militia from New York. |
| | 2000 | " Vermont. |
| | 1000 | " Massachusetts. |
| | 1000 | " New Hampshire. |
| | 5500 | |
| 5. Campobello. | 500 | militia from Maine. |
| | 10,300 | militia. |

General Officers for the attack on

Detroit,—General Hull.

Niagara.

Kingston,—Gansevoort.

Montreal.

Campobello,—Colonel Trescott, or Brigadier-General Chandler.

It is understood that everything which is not already in the neighborhood of the places can be got and carried as fast as the men can be collected and marched, except provisions to Detroit.

Half tents and travelling carriages for artillery to be made.

Measures to be taken for obtaining information from:

Detroit through General Hull.

Niagara—Erastus Granger.

Kingston.

Montreal—Saillée.

Quebec.

Halifax—some person to be covered under a commission for.

Some merchant who may have a vessel there under adjudication.

The Secretary at War to recommend to the Governors to press for twelve month *volunteers under the last* act, rather than six months.

The same under the former.

July the 27th. Defensive measures.

The places needing defense divided into three classes.

1.—Where batteries only need be provided to be guarded in common by a few men only and to be manned, when necessary, by militia.

2.—Places which from their importance, require some stronger defense, but which from the forts

already built, the difficulty of access and the strength of their adjacent population need only repairs, some inconsiderable additions to their works and garrisons.

3.—Places which from their importance, and ease of access by land or water may be objects of attack and which from the weakness of their population, difficulties of defense, etc., will need particular attention and provision, in distributing the sea ports into these classes their importance so far as depends on their tonnage, collection of import, exports domestic and foreign may be obtained from a table prepared by the Secretary of the Treasury which see.

1st class may be taken from that table readily—perhaps some places not in that may require some defense.

2nd class.

| | |
|---|---|
| Portsmouth, N. H.<br>Newburyport<br>Salem<br>Boston<br>Providence<br>New London<br>Saybrook<br>New Haven<br>Philadelphia<br>Wilmington, Del.<br>Baltimore<br>James River<br>Ocracoke<br>Wilmington, N. C.<br>Charleston | On each of these we conferred, successively, and came so far to a general understanding of the nature and extent of the works, and number of gunboats necessary for their defense, as might enable the Secretary of War to make out a detailed statement for each, for future consideration, estimating the expense of works, number of men, and number of gunboats necessary for each. |

3rd class.

Portland
Newport
New York
Alexandria and Washington
Norfolk
Savanna
New Orleans

} On these also successively, conferences took place so as to enable the Secretary of War to make a similar statement as to them.

July the 28th. The existing appropriations for fortifications being not more sufficient for New York, Charleston, and New Orleans, it is thought best to employ them entirely on those places, and leave the others till further appropriations.

It is thought that the Secretary of the Navy should purchase on credit timber and other materials for a great number of gunboats, suppose 100, but that they should chiefly be of those kinds which may be useful for the Navy should Congress not authorize the building gunboats.

Also that he should purchase on credit 500 tons of saltpetre and 100 tons of sulphur on the presumption that Congress will sanction it.

Our stock of swords, pistols and mortars being not sufficient, the Secretary at War will take measures for procuring a supply of the two former articles and will keep Troxall constantly employed in making mortars until a sufficient stock be provided.

The Secretary of the Navy will take immediate measures for procuring from London 100 telescopes of about ten guinea price for the establishment of telegraphs.

It is agreed that about 15,000 regular troops will be requisite for garrisons and about as many more as a disposable force, making in the whole 30,000 regulars.

It is also recommended to the Secretary of the Navy to recruit the whole number of marines allowed by law, to wit, about 1100, principally for the service of the gunboats. On the question, Under what circumstances I may order Decatur to attack the British vessels in our waters? it is the opinion that if they should blockade any place, preventing vessels from entering or going out or proceed systematically in taking our vessels within our waters, that the gunboats should attack them if they can do it with a good prospect of success. But Decatur is not to do this without orders from me. Should they attack Norfolk or enter Elizabeth river Decatur may attack them without waiting orders.

In endeavoring to obtain information of the state of the British posts to be attacked the following will be proper objects of enquiry:

1. The regular force.

2. The force of the militia they may command and the temper and disposition of the people, and whether armed.

3. The character of the commanding officer,

4. The situation of the port, whether in good repair—if requiring regular approaches—the situation of their magazines, etc.

5. Plans of the works, maps of the roads, what are the obstacles to the March of troops, etc.

It is agreed that Congress shall be called to meet on Monday the 26th of October and that we will assemble here on Monday the 5th of October, the proclamation to issue immediately.

Mr. Gallatin's Estimate.

| | D. | D. |
|---|---|---|
| 30,000 men employed ashore and in gunboats @ 300 | | 9,000,000 |
| Navy | 1,500,000 | |
| Occasional militia | 1,000,000 | |
| Ordnance, transports, fortifications | 1,500,000 | |
| | | 4,000,000 |
| Interest on public debt | | 3,500,000 |
| All civil expenses | | 1,500,000 |
| | | 18,000,000 |

Ways and Means.

| | | |
|---|---|---|
| Present impost reduced by war to | 8,000,000 | |
| Additional duties and taxes | 2,500,000 | |
| Sales of lands | 500,000 | |
| Deficiency to be supplied by annual loan | 7,000,000 | |
| | | 18,000,000 |

Besides which we must borrow annually the installments of public debt becoming due that year.

October the 10th. Present the four Secretaries. Agreed unanimously that in consideration of information received as to the strength of the British posts in Canada, 3,000 men (instead of 1500) must be ordered against Niagara and 500 only, instead of 1500 against Kingston. That in the message at the opening of Congress the treaty and negotiations should not be laid before them, because still depending.

October the 22nd. Present all. The Constitution is to remain at Boston, having her men discharged: the Wasp is to come to New York; the Chesapeake is to remain at Norfolk; and the sending the United States frigate to New York is reserved for further consideration, enquiring in the meantime how early she should be ready to go—it is considered that in case of war, these frigates would serve as receptacles for enlisting seamen to fill the gunboats occasionally.

After agreeing as above, proceeding to consider how the crew of the Constitution should be paid off (the Navy funds being exhausted) before the meeting of Congress, it was concluded that in order to gain time till their meeting, the Constitution should be brought round to New York, and the United States be destined for Boston.

(October) the 31st. Gunboats to be stationed at New York, seventeen at Norfolk, three at Charleston, fifteen at New Orleans and eight building in Western country. They are to have eight men for the guns, three sailors for the sails, and to depend on militia of the place for the rest, a captain for each flotilla.

November the 27th. Present all. Governor Hull writes from Detroit November 8th, that he has called on the Governor of Ohio for 500 militia infantry and a company of horse, in consequence of

a collection of Indians, kept at Amherstburg and other indications of war. General Dearborne having before directed Hull to strengthen his garrison (of 50 regulars) by calling into service three companies of militia of the place, thought it would be sufficient if we ordered three or four companies more from Ohio. The other gentlemen thought we had better let Hull's call take its course, being attentive the moment we receive intelligence from England to modify it accordingly.

Agreed that an order shall be inclosed to Governor Claiborne to remove by military force intruders on the Batture under the act of the last session of Congress.

Information being received that great numbers of intruders have set down on the lands lately obtained from the Chickasaws and Cherokees, and particularly within the Yazoo tract and some also within the Cherokee lines, the Secretary at War is to give immediate orders for removing them by military force.

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January the 25th 1808. Mr. Dawson called on me and informed me that yesterday he was called on by a Mr. Hall, a native of the United States but a British subject engaged in commerce here who told him he had had a vessel condemned at Halifax and was going to England to prosecute the appeal. That being acquainted with Mr. Erskine, and known

also to Mr. Rose since his arrival, he had informed them, and they had desired him to be the bearer of their dispatches which would be ready on the 27th. These dispatches he said would be delivered to him in a box, would contain all their communications to their Government, consequently their operations here intrigues, spies, friends, information, their own views, prospects and designs. That he believed his appeal would cost him as much as he should recover, that he was now a ruined man, had been cruelly treated by England, therefore wished to quit that country and become an American. That for a proper reward (he did not say what) he would take the papers out of the box which should be delivered him, deliver them to us, fill the box with blank papers, return to New York and making some excuse for not going he would send the box to its address. He said we should be on our guard for that those Ministers had many spies in Washington and one in the President's house who informed them of everything passing. This man is known to have been much attended to by Erskine, to have been at his parties, at those of Taylor, etc.

My answer to Mr. Dawson was that the Government would never be concerned in any transactions of that character; that moral duties were as obligatory on nations as on individuals, that even in point of interest a character of good faith was of as much value to a nation as an individual and was that by which it would gain most in the long run. That

however, he might assure Hall that we would keep his secret. Mr. Dawson had consulted with Mr. Nicholas on this communication, and after I had given him the above answer I mentioned it to Mr. Madison who approved of it.

### CABINET MEETINGS.

April the 5th. Present the four Secretaries. Having now 100 gunboats building and about 70 in service, we agreed that 20 should be stationed at New Orleans with 20 men in each, about half a dozen to be kept in different places for enforcing the embargo with eight or ten men each. Of the residue, keep on the stocks as many as we can by agreement, for preservation, and to all the rest allow two men each. Let the frigates and sloop remain where they are with about 20 or 30 men each to keep them clean, which will reduce the number of seamen to less than 900. The original establishment, as the law on which the proclamation is founded expires with the end of this session, it is rather believed that its renewal would not renew the proclamation; and as it would be disagreeable either to renew or revoke it, we conclude to let it go off in that doubtful way which may afford a reason for not proceeding to actual hostilities against British armed vessels entering our waters. We agree to renew the call for 100,000 Militia and Volunteers.

June the 30th. Present the four Secretaries and Attorney General. 96 applications for permission to send vessels out for property. Agreed as general rules: 1. That no permission shall be granted after the —— of ——. 2. None to Europe, because of the danger of the capture or detention of the vessels and money can be drawn thence so easily by bills, and to such advantage by the favorable exchange. 3. None to Asia, or the Continent of Africa, except Mogadore. 4. None to South America beyond the line. From such distances, vessels could not return before war may take place. Agreed to continue the regulation of Mr. Gallatin's circular of May 20th, except that it may be relaxed as to vessels usually employed in the coasting trade. This has a special view to the relief of North Carolina, that her corn and lumber may be sent coastwise. The Chesapeake being manned may be sent on a cruise from St. Mary's to Passamaquoddy. Two gunboats are to be built on Lake Champlain, and one on Lake Ontario—as many as convenient of the troops now raising are to be rendezvoused along Lake Ontario and the St. Lawrence, a copy of the Attorney General's opinion on the Mandamus issued to Theus in South Carolina to be sent to the districts Attorney with instructions to oppose all future attempts of the kind, and Theus to be reprimanded for his countenance to the procedure.—We are agreed that a mission to St. Petersburg is expedient; the time not now decided.

July the 6th. Present the four Secretaries and Attorney General. 1. England revokes her orders of November and January. Shall we suspend the embargo laws as to her? Answer unanimously, we shall. 2. If she revokes the order of November alone? Answer, we shall suspend, the Attorney General alone dissenting. 3. If she revokes the order of November as to our own produce only? Answer unanimously, not to suspend, but in that case to call Congress at an earlier day? If France repeals her Berlin and Milan decrees, and restores the property sequestered, shall we suspend the embargo laws as to her? Answer, call Congress and declare the embargo laws as to France suspended in fourteen days. Mr. Madison is strongly opposed to this latter part; the suspension, because it lets our vessels fall into the hands of England and so pre-determines the question of war. If the embargo is suspended as to one of the powers, it must be so as to the whole world except the other power and all other nations having similar decrees or orders existing against us.

October the 22nd. Present the four Secretaries. Intruders on the new purchase south of Tennessee, two on the Indian lands (Choctaw and Cherokee) on each side of that purchase, three on the north side of Red river. Agreed unanimously as to the first to appoint a Register and he to give notice to all the intruders to come in and make a declaration

that they have no claim to the lands, and that a military be sent in the spring to remove all who do not. There is a Colonel Harrison claiming and surveying under Coxe, who probably will not disclaim right, and will therefore be removable without disturbing the others, who are said to be industrious men of property and disposed to obey the laws. The land office can be opened in the spring which will settle everything.

2. As to intruders on the Indian lands, give notice to depart, and if they do not, remove them in the spring by military force, except from Doublehead's land.

3. As to those on Red river, let them alone and get Congress to extend the land law to them, as they are conveniently situated to support New Orleans. Unanimously agreed to. Order the detachment of 100,000 men under the law of last session, to be ready early in the spring that we may be prepared for any change in our foreign relations.

Unanimously agreed in the sentiments which should be unauthoritatively expressed by our agents to influential persons in Cuba and Mexico, to wit, "if you remain under the dominion of the kingdom and family of Spain, we are contented; but we should be extremely unwilling to see you pass under the dominion or ascendancy of France or England. In the latter cases should you choose to declare independence, we cannot now commit ourselves by saying we would make common cause with you but

must reserve ourselves to act according to the then existing circumstances, but in our proceedings we shall be influenced by friendship to you, by a firm belief that our interests are intimately connected, and by the strongest repugnance to see you under subordination to either France or England, either politically or commercially?" Anderson, our Consul going to Havana is to be instructed accordingly; so is Hughes who is going to Mexico in quest of Pike's men,[1] and Burling is to be sent to the city of Mexico under pretext of searching for Pike's men also, but in truth to communicate these sentiments to proper characters. Claiborne is to be entrusted with them also, to communicate according to the occasions he may find.

### CONVERSATION WITH THE BRITISH MINISTER.

November the 9th. Conversation with Mr. Erskine. He was much alarmed at the conversation out of door looking like a declaration of war with Great Britain.

He spoke (declaring that if he was an American he would so view the thing) as the most rational for us to let our commerce go out and take its chance and that we should defend it against all equally, in-

[1] Captain Zebulon Montgomery Pike was sent on a geographical expedition to Louisiana in 1806. He and his party were arrested by a detachment of Spanish cavalry for trespassing on Spanish territory, and were carried to Santa Fé. After a long examination and the seizure of his papers he was escorted home, arriving at Natchitoches, July 1, 1807.

deed he seemed to think it best we should declare against all. He said this would be viewed as so equal that no rancorous war would be waged by either and peace would be easy at any time. I told him that there were but three alternatives, 1. war, 2. embargo, 3. submission, and that no American would look a moment at the last; he agreed to it.

I told him I thought it possible France might repeal her decrees as to us, yet I did not understand from Mr. Pinckney's communications that England would even then revoke her decree; he declared in the most explicit terms she would. I then explained that the French repeal might only go to the high sea. He observed that he did not know that that could produce a repeal from England, because the exclusion of her merchandise would remain.

I observed to him that I thought England decided on much by misrepresentations and from the errors of strangers who associated with but one party. He cleared himself of that by saying he mixed much with both, and could not be supposed to have any interest but in coming at the truth and communicating it.

I noted to him the conversation of Mr. Canning in the month of June when Mr. P. inferred the orders would be revoked and the month of July when he was totally off. I intimated to him my suspicions that the Halifax expedition was intended to support a hoped insurrection in Boston. He protested at once decidedly against the error of that suspicion,

that his Government could not be so uninformed as to think of countenancing the taking adverse possession of a place they could not hold many days: and that assuredly they had not a single hostile view towards this Country, and that the people of England were equally averse to a rupture with us. He spoke of the situation of Spain and that Bonaparte would soon be ousted there. Lamented the state of the world and I joined him in that and said, that if either Bonaparte or his King were to die we should have peace. He said the Prince of Wales was as much anti-Bonapartian as anybody. That he was persuaded there could be no safety in a peace with him which would let their navy go down and Bonaparte's get up. I observed that went to a principle of eternal war. He said, no; that that danger would be lessened by Bonaparte's death, or by such a spirit of insurrection in the North as had appeared in Spain.

I told him I was going out of the Administration and, therefore, might say to him things which I would not do were I to remain in. I wished to correct an error which I at first thought his Government above being led into from newspapers, but I apprehended they had adopted it, this was the supposed partiality of the Administration and particularly myself in favor of France against England. I observed that when I came into the Administration there was nothing I so much desired as to be on a footing of intimate friendship with England, that

I knew as long as she was our friend no enemy could hurt: that I would have sacrificed much to have effected it and, therefore, wished Mr. King to have continued there as a favorable instrument. That if there had been an equal disposition on their part I thought it might have been effected; for although the question of impressments was difficult on their side and insuperable with us, yet had that been the sole question, we might have shoved along, in the hope of some compromise; that, indeed, there was a ground of accommodation which his Ministry had on two occasions yielded to for a short time, but retracted; that during the Administration of Mr. Addington and the short one of Mr. Fox, I had hoped such a friendship practicable, but that during all other Administrations I had seen a spirit so adverse to us that I now despaired of any change. That he might judge from the communications now before Congress whether there had been any partiality to France to whom he would see we had never made the proposition to revoke the embargo immediately which we did to England and again that we had remonstrated strongly to them on the style of Mr. Champagny's letter, but had not to England on that of Canning, equally offensive. That the letter of Canning now reading to Congress was written in the high ropes and would be stinging to every American breast.

He admitted Mr. Canning wrote strongly, and spoke strongly, always taking the highest ground.

I told him it was an unhappy talent, that nothing enabled a man to get along in business so well as a smooth temper and smooth style. I observed that if we wished war with England as the Federalists charged us, and I feared his Government might believe, nothing would have been so easy when the Chesapeake was attacked, and when even the Federalists themselves would have concurred, but on the contrary that our endeavors had been to cool down our countrymen and carry it before their Government. He said it would have been very unjust to have made an individual act the ground of war, which his Government might and did disavow. I agreed to that, but added that the same class of men had committed and were in the habit of committing so many atrocious insults on us, that it was impossible not to feel them deeply. That I did not charge his Government with approving all this, because I believed that they could not control them, that the officers were allied to the highest families in the kingdom, were supported by such an aristocracy as that no minister dare move against one, unless he had acted as a coward and then the nation would support the minister in shooting him. He said I was much mistaken in supposing the Government could not control the officers of the navy; that there was such a multitude of applicants to enter the navy as placed the whole very much under the power of the Government, and besides that they had such a number of officers beyond what they could

employ as made it easy for a Minister to leave one unemployed.

I told him in the course of the conversation that this country would never return to an intercourse with England while those orders of council were in force, in some part of it also I told him that Mr. Madison (who it was now pretty well seen would be my successor, to which he assented,) had entertained the same cordial wishes as myself to be on a friendly footing with England.

I committed all this to writing the moment Mr. Erskine left me. I have always expressed the substance and very often the very words and phrases expressed. They were however much more dilated than is here expressed on paper.

### CABINET MEETINGS.

December 1st. Present the four Secretaries. The expedition prepared at Halifax, consisting of 4,000 men, is believed to be kept in readiness, in case war is declared by us, or obviously imminent, it is to go off instantly. Abandoning Upper Canada, to us, and take possession of New Orleans, we therefore determine unanimously that all the new recruits from Pennsylvania inclusively Southwardly and Westwardly shall be sent off immediately (being about 2,000 men) those in the Atlantic States by sea, the Western down the Ohio and Mississippi and provisions to be sent down the Mississippi with the men, if the state of the river permits them to go,

besides these there are 1,000 of the old troops which can be rapidly brought to New Orleans; that we may count on 1,000 good militia of Orleans, and 1,000 of Mississippi to be instantly commanded, making a force of 5,000 men. That thirty gunboats shall be immediately sent into Lake Pontchartrain, and we are to ask 3,525 seamen for the next season, to fifteen for seventeen gunboats, and the residue to fill the eleven small vessels we have from the John Adams, now a corvette, down. These eleven small vessels to be sent immediately to the Eastern ports to enforce the embargo. We are to undertake to make the canal at New Orleans, cost it what it will.

February the 1st, 1809. Present all. On the execution of the act for employing an additional Naval force. Agreed. 1. To raise men to man the thirty gunboats to proceed to New Orleans. 2. As many as will man thirty more to be sent to different ports to support the embargo. 3. To man the small vessels below the size of a frigate. 4. To man the Constitution. By the time these are raised we shall know whether the embargo, war, or what else is to be the state of things. The Chesapeake is to proceed instantly to Boston.

February the 25th. Present Secretaries of State, Treasury, Navy and Attorney General. What orders shall be given as to English and Spanish ships attempting to pass New Orleans for Baton Rouge?

Answer, English ships have been hitherto prohibited, that being the highest port of entry. Spanish ships have been permitted to go up, except when having slaves on board.

Let things continue so till Congress rises, when their proceedings will decide what should be done.

Agreed that orders shall be given to the military to remove squatters from the lands of the Chickasaws, Cherokees and Choctaws, except Doublehead's reserve and Wafford's settlement.

# THE WRITINGS OF
# THOMAS JEFFERSON

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ALBERT ELLERY BERGH
EDITOR

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Jefferson at Seventy-three

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Jefferson at Seventy-three

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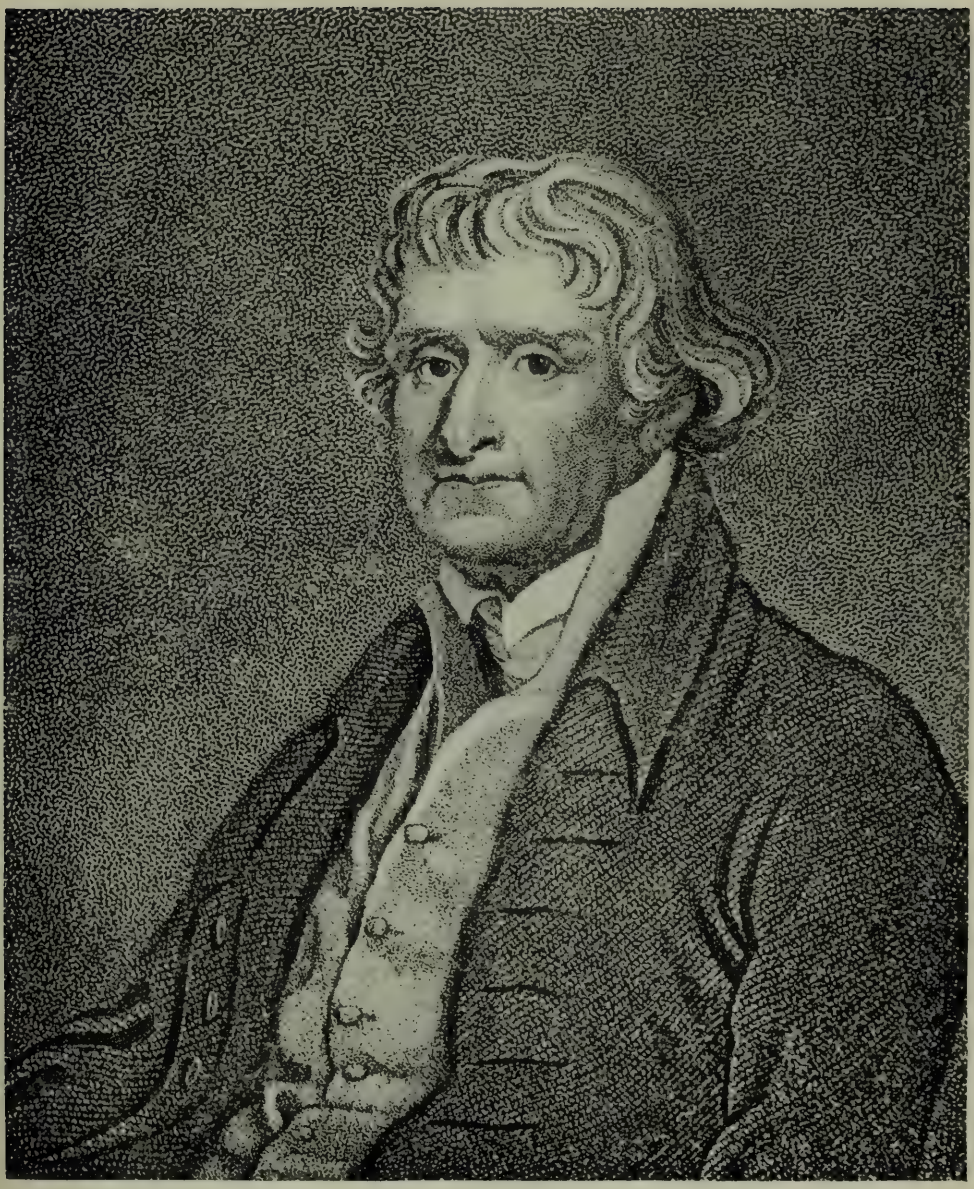

# THE UNIVERSITY OF VIRGINIA,

AND

# THOMAS JEFFERSON, ITS FATHER.[1]

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The lives of institutions, like those of human beings, have their vicissitudes. This University in whose honor we are gathered together to-day, has not been an exception. It had a long struggle even for existence. Joy and triumph followed when, eighty years ago, its first corner-stone was laid with pomp and ceremony in the presence of a distinguished company which included three illustrious men who had filled the office of President of the United States. A long succeeding period of growth, prosperity and happiness was rudely interrupted by the desolating storm of war—war raging with fury around its own temples, and driving even its own peaceful children into the grim work of destruction and slaughter. But even war, which spares almost nothing, yet spared the walls with their precious contents. The heart of the soldier will still melt before the sad pleading of the Muse.

[1] An Address delivered by James C. Carter, LL. D., upon the occasion of the Dedication of the new Buildings of the University, June 14, 1898.

"Lift not thy spear against the Muses' bower:
The great Emathian conqueror bid spare
The house of Pindarus, when temple and tow'r
Went to the ground; and the repeated air
Of sad Electra's poet had the pow'r
To save the Athenian walls from ruin bare."

The dawn of peace found the University weak and exhausted, but not disheartened. The people of Virginia who had learned to cherish it, its sons who looked back to it with fond affection, the warm-hearted and open-handed friends of learning in distant places came forward with liberal help. The Muses returned and re-peopled their haunts, and a new era of prosperity, stimulated by the new national life, began its course.

But another stroke of adversity awaited it,—this time, not from the hostile passions of man, but from the rage of the elements, less savage indeed, but not less unsparing. Its very walls were laid in ruins and their precious treasures wasted. But if any evidence were needed to show the extent to which the University had increased in power, in grandeur, in usefulness, and in the esteem of the people of Virginia and the friends everywhere of the higher education, it would be found in the undaunted spirit with which this disaster was faced. There was an immediate resolve that it should rise from its ashes in yet fairer proportions, more worthy of the spirit in which it was originally founded, better equipped for the great work to which it was originally dedicated, and a more glorious monument to the great name forever associated with it.

This great purpose has now been accomplished, and we are gathered together to-day to celebrate its completion. The scene before me and around is the best evidence of the interest of the occasion. The sons of the University from near and far have returned to the bosom of their Fair Mother to rejoice together over her happiness. Representatives of other seats of learning are here to offer their congratulations. The diplomatic representative of the great empire at the antipodes—an empire in which learning has for ages been held in honor—lends to the occasion the dignity of his presence. The venerable Commonwealth is here in the person of the Chief Magistrate and principal officers of state to manifest her own interest in an institution which her bounty has cherished and which has given back in return the support upon which alone a free Commonwealth can rest.

It is the custom on such occasions to make provision for deliberate utterance of the thoughts which they are calculated to excite, and the authorities of the University have thought it suitable to invite to this office, not—I have been made to feel—an entire stranger, but a friend from a distance, whose opportunities have not been such as to permit a close observation of the history and fortunes of the institution. Profoundly sensible of the honor thus conferred upon me, I cannot help feeling how inadequate I am to its due performance. I cannot speak of the University of Virginia with all the affection which

the graduate cherishes for his Alma Mater, nor with the full pride which the Virginian alone can feel; but to those who regard this institution as their own, who have control over its destinies, or have been reared within its walls, a view of it, as it appears to outside observers, may not be unwelcome, or wholly uninteresting. We are sometimes enabled to correct our own conceptions of ourselves, and qualify ourselves in some degree for the better performance of our own duties, by learning what is thought of us and what is expected of us by others.

Let me then occupy your thoughts for a brief hour with a sketch, very rude and imperfect, of the origin of the University and of its principal features as they appear to the world at large, to which I may add some allusion to its illustrious founder, and to the political philosophy the teaching of which he so ardently desired to promote.

Its origin offers a strong contrast with the beginnings of our principal seats of learning which preceded it. Harvard, Yale, Columbia and Princeton began as mere schools for humble colonies, with no prevision of the great destinies which awaited them. Their majestic proportions have been developed and shaped, during long periods of time, by many different hands and many varying influences. But the University of Virginia sprang into life, in full panoply, from the conception of a single man, like Minerva from the brain of Jove. The aim of its founder was not to supply merely local and immedi-

ate wants, but to make provision for the growth, maintenance and glory of the new civilization and the new empire with which his visions were filled. No sketch can even be outlined of the origin and character of this institution which does not take in as a principal element the figure of this illustrious man.

The leading feature in the mind and character of Thomas Jefferson was a firm and undoubting belief in the worth and dignity of human nature, and in the capacity of man for self government. This was at once the conclusion of his reason and the passion of his soul. Whence it came to him it is difficult to discover; it was not from the sense of subjection and oppression felt by an inferior class in society towards those above it, for he belonged to the class of well to do, if not wealthy, Virginia land-holders; not from the venerable college of William and Mary, in which he was bred, for his opinions were not the cherished sentiments of that institution; not from his early and familiar acquaintance, to which he has acknowledged his great indebtedness, with Dr. Small, the President of that College, George Wythe and Gov. Fauquier, for their tendencies were towards very conservative views; not even from the fiery eloquence of Patrick Henry, to which he had often listened with admiration,—that may have fanned the flame in his bosom—but indignation at the Stamp Act would scarcely have nerved him to his early effort in the House of Burgesses to facilitate the manumission of slaves. It seems to have been

inborn; but whether inborn or communicated, it ruled his life; it burst from him like the peal of an anthem when he came to pen the immortal Declaration; his long residence in Europe only confirmed it; the excesses of the French Revolution had no effect to abate it, and it breathes through every line of his public utterances from his seat as President of the United States; it was the foundation of his virtues and the source of his errors; and not only the source of these, but the cause of the false imputation to him of errors he never committed; his friendships and his enmities were alike due to it; he distrusted all who were not in full sympathy with it, and they distrusted him. Taught by bitter experience that the principles of true democracy are often as distasteful to the multitude as they are to the possessors of wealth and privilege, that the masses of men, fascinated by the splendors and force of concentrated power, may easily be persuaded, sometimes, to surrender in exchange for them the sense of individual freedom, even this did not dishearten him, and after filling, for eight years, the highest office in the gift of his countrymen with undeviating fidelity to the principles of popular government, he retired to the rest and repose of his beloved Monticello, carrying thither convictions of the worth and dignity of human nature, and ideals of government by the people, as distinct and fresh as those which animated him in the morning of his life.

Men have forever been prone to cast either a

doubt or a sneer upon the apparently beneficent deeds of those whose principles they reject and whose influence they fear. A large part, at least, of the acts of Mr. Jefferson's official life still remain, and will, perhaps, forever remain, the subjects of dispute; but he himself has happily singled out, to be engraven upon his tomb, three particular achievements with which he wished his name to be associated, by friend or stranger, in all future time. The latest generation of his countrymen will not question the justice of his claim, nor withhold any part of the full tribute of honor and glory which belongs to the "author of the Declaration of American Independence, of the Statute of Virginia for Religious Freedom, and to the Father of the University of Virginia."[1]

Mr. Jefferson, at his retirement, was sixty-six years of age. His intellectual faculties were unimpaired, his bodily strength was well preserved, and he was still conscious of the possession of a large capacity for usefulness to his countrymen and to mankind. His ambition for public office, never very deeply cherished, had been fully satisfied, and he was inwardly resolved never again to seek it. He had cherished through life a passion for the acquisition of knowledge, and was one of the best educated men, if not the best educated man, of his country and time, and he could have filled the remainder of his days with a serene and tranquil enjoyment of the pleasures of literature and science; but such a life

[1] From the inscription on his tomb.

was not possible for him, nor was any life possible for him the strength of which was not devoted to the advancement of the liberty and happiness of men. He had in early manhood formed a scheme of public education, which, from time to time, had pressed itself on his attention throughout even the busiest years of his public life. It was part of his political philosophy. Lover of liberty as he was, firmly as he believed that popular government was the only form of public authority consistent with the highest happiness of men, he yet did not believe that any nation or community could permanently retain this blessing without the benefit of the lessons of truth, and the discipline of virtue to be derived only from the intellectual and moral education of the whole people.

His general scheme appears to have embraced three branches: (1) the division of the whole state into districts, or wards, and the establishment in each of a primary school in which the rudiments of knowledge should be taught to all; (2) the establishment of a sufficient number of higher academies or colleges, in which those exhibiting in the primary schools superior intellectual endowments might acquire, *gratis*, a further and higher education; and (3) a State University, in which each science should "be taught in the highest degree it has yet attained."[1]

The length of time during which, and the intensity with which Mr. Jefferson had devoted himself to this great object, is well manifested by an extract from a

[1] See Jefferson's Autobiography; vol. 1, p. 47.

letter written by him in 1818, some ten years after his retirement from the presidency. "A system," says he, "of general instruction which shall reach every description of our citizens, from the highest to the poorest, *as it was the earliest, so will it be the latest, of all the public concerns in which I shall permit myself to take an interest.*"[1]

The two branches of his scheme relating respectively to the primary schools and the higher academies encountered obstacles which it was impossible for him to surmount, and they are not those features which chiefly concern us to-day; but I cannot resist the temptation to read before this audience his statement of the objects of primary education contained in the celebrated report prepared by him for the Commission appointed by the Governor of Virginia under an act of the General Assembly and which met in 1818 at the unpretending tavern at Rockfish Gap in the Blue Ridge. There have been held since that day, in many parts of the United States, conventions and conferences of teachers, educators and friends and patrons of learning more numerously attended, favored with more abundant information, and with other advantages for the consideration and discussion of educational questions; but none, certainly, more distinguished for the dignity and ability of its members. Besides senators and judges, there were among those who assembled on that occasion, James Monroe, then President of the United States,

[1] Correspondence of Jefferson and Cabell; p. 106.

and his two predecessors, James Madison and Thomas Jefferson. And, certainly, we may look in vain for any public statement before that time or since, of the objects of public education so concise, so comprehensive and so just as that contained in the report of this Commission written by Jefferson. He thus defined the objects of *primary* education:

"1. To give to every citizen the information he needs for the transaction of his own business.

"2. To enable him to calculate for himself, and to express and preserve his ideas, his contracts and accounts in writing.

"3. To improve, by reading, his morals and faculties.

"4. To understand his duties to his neighbors and country, and to discharge with competence the functions confided to him by either.

"5. To know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates; and to notice their conduct with diligence, with candor and judgment.

"6. And, in general, to observe with intelligence and faithfulness all the social relations under which he shall be placed."[1]

This statement of the objects of primary education will never be improved. It ought to be written in letters of gold and hung in every primary school throughout the land and be known by heart to every teacher and child therein. It is, indeed, more than

[1] U. S. Bureau of Education, Circular No. 1, p. 33.

a statement of the elements of rudimentary education. It is an enumeration of the duties of every good citizen under a popular government.

The apparent impossibility, at the time he began his effort, of impressing upon the Commonwealth his sense of the necessity of a universal provision for primary education, moved Mr. Jefferson to turn his attention to the third branch of his scheme, that which embraced a State University. This, although not, in his democratic view, the part of his plan which promised results of the widest utility, was the one which offered to him the most congenial field of effort, and held out to his hopes a better promise of success.

His conception in its main elements had been in his mind from early manhood. He had never dismissed it from his thoughts. He cherished it during the gloomy years of the Revolution. He improved it during his long sojourn in France. He recurred to it again and again in the midst of the perplexities which distracted him during both his presidential terms, and he brought it gradually to a completion after his retirement. He sought every aid which he could derive from independent study, from unceasing correspondence with men of learning familiar with university education and from personal intercourse with those interested in his project whom he could attract to his own hospitable roof.

I have no time to recount the successive steps by which his plan proceeded towards its realization; its partial embodiment in the Albemarle Academy, its

fuller development in the Central College, under which name the corner-stone of the future University was laid, and its final establishment in fact and in name by the passage through the General Assembly, on the 25th of January, 1819, of the bill uniting the Central College and the University of Virginia.

It would be no disparagement of the glory to which Mr. Jefferson is entitled for this great achievement to say that he could never have accomplished the work without the aid of others. The assent of the Legislature was needed, and for this a favoring public sentiment was necessary; but it was here that Mr. Jefferson's task began. For forty years he had been laboring in every form in which public sentiment could be reached, through the press, and by correspondence and personal influence with leading public men, to create, and he finally created, a conviction of the importance and necessity of the work. But, however conspicuous the place which may be assigned to him, there was one coadjutor whose devoted labor and effective aid can never be forgotten. The right arm upon which he relied in later years, and without which it may well be doubted whether this audience would be gathered together to-day, was Joseph C. Cabell. The *alumni* and friends of the University of Virginia may be trusted to take care that that name shall not perish from the grateful memory of men.

The whole work, however, was as yet by no means accomplished. I have just said that the University

had become established in fact and in name; but the fact was only the legislative *fiat*, and the name as yet but a name. The conception of a University embraces noble buildings which contain its libraries, its collections, its halls of instruction, and which, in most instances prior to this time, had been the contributions of successive generations. Of these there were as yet none; and in nothing does this institution more clearly appear as the creation of Mr. Jefferson's mind than in its material structures and their situation.

In respect to the situation, the presence of a selfish interest may be recognized and excused. Among the motives which stimulated his zeal was undoubtedly a desire, of which we have more than one example among democratic statesmen, to spend the years of retirement in the congenial neighborhood of a great institution of learning and science; and it was the longing of his heart that the University should have her permanent seat, "her arms and her chariot," in the neighborhood of his own Monticello. To this end he employed every resource of argument, and when this failed, of art, to persuade the body of which he was himself a member, of the superior claims of this locality. They were obliged to admit that healthiness and centrality ought to be the predominating considerations; but, admitting this, they could hardly resist the argument afforded by Mr. Jefferson's "imposing array of octogenarians" then still living in this region; and, as to centrality, he was ready with a demonstration that on whatever

theory the lines might be run "they would be found to pass close to Charlottesville."[1]

The form, the architecture, and the arrangement of the material structures seem to have been altogether his own; and here he did not allow the simplicity and frugality of his political philosophy to lead him astray. His vision was of a University which would appeal to the sentiments, and thus attract to itself the most famous teachers, with crowds of scholars. He knew the Muses could not be enticed to take up their abode in mean and squalid habitations. He wrote to his efficient helper, Cabell: "The great object of our aim from the beginning has been to make the establishment the most eminent in the United States in order to draw to it the youth of every State, but especially of the South and West. We have proposed, therefore, to call to it characters of the first order of science from Europe, as well as our own country, and not only by the salaries and the comforts of their situation, but by the distinguished scale of its structure and preparation, and the promise of future eminence which these would hold up, to induce them to commit their reputation to its future fortunes. Had we built a barn for a college and log huts for accommodations, should we ever have had the assurance to propose to an European professor of character to come to it?"[2] He sought, therefore, to reproduce on the American frontier a

[1] U. S. Bureau of Education, Circular No. 1, 1888, p. 37.
[2] Correspondence of Jefferson and Cabell; p. 260.

vision of the architecture and art of Greece and Rome. He seems to have been his own architect and almost his own builder. It would be strange, indeed, if the results had altogether escaped criticism, or if personal vanity had not, to some extent, usurped the place of knowledge; but it is no mean tribute to the merit of the original design that it has been, after the lapse of three-quarters of a century, reproduced and perpetuated in the principal restoration which we dedicate to-day.

On the 7th of March, 1825, the University was thrown open for the reception of students, and its actual career began. It must have been a day of unspeakable satisfaction to Mr. Jefferson. A long life filled with public service and public cares had been at last crowned by what he regarded as its most useful achievement, at the very moment when he had reached the boundary which limits human endeavor; but if he was capable of no further effort there was no further effort which he was called upon to make. It was the very point at which, as he had many times declared, he could with happiness pronounce his "*nunc dimittis*," and the moment was not long deferred. On the 4th day of July of the succeeding year, just half a century after the American Colonies had rung out to the world in his own immortal language their declaration of nationality, he closed his career on earth.

This is not the time, had I the ability, to make any attempt to assign the place to which this illustrious

little to admire in the career of Mr. Jefferson. He knew too well the lessons of history. He knew what visions of empire had dazzled the ambition of Rome, while Rome was yet free,—

> "Tu regere imperio populos, Romane, memento;
> Hæ tibi erunt artes; pacisque imponere morem,
> Parcere subjectis, et debellare suberpos."

And he knew also the terrible penalty to Rome and the world which an indulgence of those visions cost. He had lived in the midst of the interesting scenes which ushered in the emancipation of France, and had afterwards shuddered to see how ruthlessly the passion for extended empire and military glory would trample upon true liberty. He was a pacific ruler. War, except in self-defence, and as a last alternative, he held in detestation, as the enemy both of civilization and liberty. His patriotism expanded into philanthropy, and permitted no other ambitions respecting foreign nations than those of cultivating the peaceful relations of trade and commerce with the whole family of man.

Whatever abatement we may be required or disposed to make from his credit as a practical statesman, the sum of his achievements was hardly equalled by any of his contemporaries, save one alone, and the general features of his political philosophy still remain as the nominal creed at least of the great body of his countrymen.

But what, if any, was the particular conception of university education which he enshrined within these

walls? Is it still cherished here, and will it be a worthy guide in training the intellect and directing the aspirations of the future generations who are to flock hither? These are questions which more immediately concern us on this occasion.

I suppose most men who have given great attention to the subject of education have not thought it appropriate to inquire for what it was useful; they would deem it useful in itself, as being the development of the faculties of man, or, if required to assign an ulterior object to which it should be held subservient, they would point to nothing less general, or less absolute, than human happiness.

This, however, was not Mr. Jefferson's view. Lover as he was of the sciences, and of all learning for their own sake, happy as he had always been made while cultivating them, he yet would never have expended so many years of his life in founding this institution, if he had had no hopes other than those of establishing a university on the ordinary model, even though there were a promise of rivaling the fame of Oxford or Bologna. With him, university education was important as being a part of general education, and this was important because necessary to the development and preservation of that civil and political liberty which he deemed essential to the progress and happiness of man.

His idea of university education was, therefore, a part of his political philosophy. He believed that there was a system of government founded upon the

principles of human nature under which the largest liberty and happiness were attainable, but only upon the condition of a wide—a universal—diffusion of popular education, and that such education embraced the cultivation in the highest degree of those selected minds exhibiting the highest order of genius. It was by means of a systematic cultivation of the best natural geniuses in the land that he hoped to carry all the sciences to the highest degree of cultivation, and among them especially, the science of free government.

The animating principle of his political philosophy was a jealousy of all governmental power in whomsoever vested. Such power is, of necessity, to be exercised by some over others. It may be wrongfully usurped, or voluntarily entrusted, but, in either case, is liable to be abused; and, in Jefferson's view, the best guaranty against abuse consisted in preventing usurpation and withholding delegation. He knew, indeed, that government to a certain extent was necessary, and, therefore, that it was necessary to delegate and entrust power; but this he would do with stingy parsimony, measuring the amounts doled out by the rule of rigid necessity. This was the ground of his animosity towards any concentration of power in the hands of one, or a few; because concentrated power is a common form and fruit of usurped or delegated power. Nor did his democracy assume that socialistic form which would merge the liberty of the individual in the equality of the

masses. It was the natural, original freedom of man which he sought to preserve. He was the apostle of individualism. He lost no opportunity of inculcating his favorite principle, and a question as to whether primary schools should be supported and managed by counties, or each by the particular district in which it was situated, led him into a very concise and excellent statement of his whole theory: "No, my friend," said he, "the way to have good and safe government is not to trust it all to one; but to divide it among the many, distributing to every one exactly the functions he is competent to. Let the National government be entrusted with the defence of the nation, and its foreign and federal relations; the State government with the civil rights, laws, police and administration of what concerns the State generally; the counties with the local concerns of the counties and each ward direct the interests within itself. It is by dividing and subdividing these republics, from the great national one down through all its subordinations, until it ends in the administration of every man's farm and affairs by himself; by placing under every one what his own eye may superintend, that all will be done for the best. What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body, no matter whether of the autocrats of Russia or France, or of the aristocrats of a Venetian Senate. And I do believe, that if

the Almighty has not decreed that man shall never be free(and it is blasphemy to believe it) the secret will be found in the making himself the depository of the powers respecting himself so far as he is competent to them, and delegating only what is beyond his competency by a synthetical process to higher and higher orders of functionaries, so as to trust fewer and fewer powers, in proportion as the trustees become more and more oligarchical." [1]

At the present day we are so familiar with these ideas that it is difficult to imagine that they were ever novel; but in Mr. Jefferson's time it was far otherwise. Not all of those who espoused the side of the colonies against Great Britain and joined in the struggle for independence were believers in popular government, and many even of those who supported the new constitution had but feeble faith in democratic principles. Many even preferred monarchical government, and many more what they called a strong government, that is, a government strong enough to maintain itself even against the popular will.

And it is difficult also to understand the partisan hostility and bitterness engendered by these conflicting views. Each side seemed to believe that the other was bent upon the destruction of everything valuable in society. Jefferson and Marshall, two great Virginians, incomparably the first political geniuses in the land, utterly distrusted each other.

[1] Correspondence of Jefferson and Cabell; p. 54.

Nor could men be much blamed for withholding assent from the political ideas of Jefferson. There was but little in the teachings of history to support them. They were based in large degree upon *a priori* conceptions. He was obliged to admit that all previous attempts at popular government had been failures; but this was, in his view, because of special disfavoring conditions; the long habit of submitting to despotic authority had enervated the people, or the true principle of popular government had been violated by delegating and concentrating too much power in the hands of a few. He saw in the conditions exhibited by the American colonies the first real opportunity for establishing liberty. For a century these colonies had been exempt from the dominion of feudalism, from sectarian domination, and from nearly every form of severe governmental oppression. Here was a virgin soil, an abundance of land, no degrading poverty, a brave and intelligent people which had just vindicated its title to independence after a long struggle with the mightiest of European powers. He could not help thinking that "unless the Almighty had decreed that man should never be free (and it would be blasphemy to believe this)" that the golden opportunity was now offered; that here the free spirit of mankind should "put its last fetters off;" that here should be established no bastard, degenerate freedom, no government affecting to be popular, but really resting upon monarchical or aristocratic contrivances

but a freedom in which every man should be master of his own destiny, in which there should be no usurpation of power, and no delegation of power, unless its natural possessor was unfitted to exercise it, and consequently no concentration of power, beyond what rigid necessity required—no great standing armies—no powerful navies carrying the flag in triumph over every sea,—no interference with liberty of opinion or speech—no interference with liberty of action, so long as the public peace and order were not broken—this was Jefferson's vision of republican freedom.

It would be a gross injustice to impute to him hostility to government itself, or any indulgence of mere license. Government was in his view the first and most important of human necessities; but instead of regarding it, as some seemed to do, as being in itself the source of good, and therefore presumably beneficent wherever its power was felt, he looked upon it as beneficial only so far as it was necessary to prevent one man from encroaching upon the liberty and rights of another, and as carrying with it great possibilities of mischief and wrong, whenever its interference was pushed beyond its just limits.

Such was Mr. Jefferson's conception of liberty and government which he intended should be accepted by this University, and be therein defended and propagated. It was only through the universal adoption of this idea that it seemed to him possible

for the newly created nation to reach the glorious destiny which the future had in store for it; and hence the importance he attached to it, and the unquestioning assent which he demanded for it. By nature the most tolerant of men, upon this point he was dogmatic, even to bigotry. A thorough believer in the inherent power of truth to triumph ultimately over error, he was yet unwilling to subject his favorite dogma to the temporary hazards of a contest. In one of his communications just before the University was thrown open to students, he expressed to one of his fellows upon the Board of Visitors his anxieties in this direction. Said he: "In most public seminaries text-books are prescribed to each of the several schools as the *norma docendi* in that school; and this is generally done by authority of the trustees. I should not propose this generally in our University, because I believe none of us are so much at the heights of science in the several branches as to undertake this; and, therefore, that it will better be left to the professors, until occasion of interference shall be given. But there is one branch in which we are the best judges, in which heresies may be taught, of so interesting a character to our own State, and to the United States, as to make it a duty in us to lay down the principles which shall be taught. It is that of government. Mr. Gilmer being withdrawn, we know not who his successor may be. He may be a Richmond lawyer, or one of that school of *quondam* federalism, now consolidation. It is our duty to

guard against the dissemination of such principles among our youth, and the diffusion of that poison, by a previous prescription of the texts to be followed in their discourses."[1]

Of the fidelity heretofore of this University to the political theory thus entrusted to it, no doubt will be entertained. Its own convictions have concurred with the sentiments of grateful admiration for its father. Successive generations of the sons of the South have become deeply imbued with it by lessons received upon this spot and have greatly aided in making it the unchallenged popular faith throughout the largest part of the land.

Shall this fidelity be continued into the indefinite future? Shall Jefferson's theory of Liberty be forever cherished around his tomb? Has the experience of a century vindicated its pretensions as the only sure foundation of popular government, or stamped upon it the discredit of an illusive impracticability? These are not uninteresting questions and they deserve my few remaining words.

If an intelligent observer removed from any participation in our political strifes were to survey the history of our country for a century with the view of ascertaining how far events had justified the teachings of Mr. Jefferson and his followers, he would find difficulty in reaching at first, at least, a favorable verdict. He would impute, perhaps not unjustly, to that peaceful policy the national humiliations

[1] Correspondence of Jefferson and Cabell; p. 339.

which preceded and accompanied the War of 1812 with Great Britain. He would see one of the supposed conclusions of that political philosophy as originally drawn and carefully expressed by the great apostle himself in the celebrated Kentucky resolutions of 1798, and afterwards re-stated and vindicated by another illustrious son of the South, made the justification for a bold and deliberate attempt to nullify, throughout the territory of a State, a law of the United States. He would see this conclusion at a still later period made the ground for a widespread defiance of the entire national authority, and the main support of a civil strife which deluged the land with fraternal blood.

Further reflection, however, would probably dispel in part, if not altogether, the unfavorable impression. Mr. Jefferson's political system was, no doubt, based upon the assumption of peace. He held in abhorrence large standing armies and powerful navies, and a nation unprovided with these will sometimes find itself subjected to humiliation, as we were in the era of 1812, either by submitting to injury from a consciousness of unreadiness to make good a defiance, or by being suddenly overwhelmed by an inferior hostile force. But are nations unprepared for war the only ones likely to be subjected to humiliations? Was England never humiliated, or France, or Germany? And what can be a greater humiliation than that of an unjust aggression upon the rights of others and the peace of the world so

likely to be committed by those who think themselves armed with resistless power? And had we always been armed on the land and on the sea in proportion to our power, should we have gained and held the glory hitherto accorded to us by civilized mankind of being the promoters everywhere of international law, and the advocates of peace and justice among nations? And, even in respect to power itself, were we called upon to exhibit our strength in a just cause, could we under a more consolidated government, assemble the overwhelming forces which the emulation of rival States will now willingly place at the service of the nation?

For the theoretical doctrine which supported the claims of nullification and secession, Mr. Jefferson must, indeed, be held largely accountable; but this was never any essential part of his philosophy of free government, if indeed it be consistent with it. It concerned only the interpretation and effect of the particular constitutional instrument by which the colonies united themselves together.

I must employ a few words here to make this more plain. In the great political division which took place soon after the adoption of the constitution, men arrayed themselves on the one side or the other according as they favored the advanced doctrines of popular government, or, distrusting the capacity of the people, inclined towards the principles and methods of a constitutional monarchy. The impulse of the movement which culminated in the French

Revolution, reaching these shores, stirred the sympathies and passions of both parties, the one espousing the cause of Democratic France and the other of monarchical England. The Federal party, alarmed for the public welfare, and fearful lest the license of the French revolutionists should be repeated on this side of the water, sought to strengthen authority by those acts of repressive Federal power, since generally condemned, called the Alien and Sedition laws. The constitutional validity of these was attacked by Jefferson, and his argument was formulated in the celebrated Kentucky resolutions, in which he affirmed the right of each State, under the Constitution, to determine for itself the validity of any Federal enactment. The main question was not whether under a Federal government formed to secure the ends which ours had in view, it would be wise to delegate to the general government the exclusive right to determine the extent of its own powers, but whether in point of fact such a delegation was contained in our own constitution. Upon this point it would be true to say that Mr. Jefferson and his followers had their own way, until the appearance of the scene, at a later period, of those great protagonists in constitutional debate, Webster and Calhoun. In what condition the struggle between these renowned champions left the dispute I will not undertake to say,—

"Non nostrum tantas componere lites;"

but I may hazard the opinion that if the question had been made, not in 1861, but in 1788, immediately after the adoption of the Constitution, whether the Union as formed by that instrument could lawfully treat the secession of a State as a rebellion and suppress it by force, few of those who had participated in framing that instrument would have answered in the affirmative.

Nor has that question been in any manner settled by the result of that civil strife which has effected such a profound revolution in the political and social world of America. I cannot admit the efficacy of force to settle any question of historic or scientific truth. Truth is eternal and immutable, and the warfare of those who seek to suppress it will forever be in vain. The question which the result of that strife did settle, as has been eloquently and powerfully shown by a distinguished statesman and jurist of the South—shown, too, in pronouncing a glowing eulogy upon his great teacher and master, Calhoun—was, not whether our Constitution actually created a consolidated nation—nations cannot be created by agreement—but whether the Federal Union, composed originally of colonies the people of which had been subjects of the same sovereign, and which had never occupied the attitude of independent States before the world, embracing, also, new States created out of territory which was the common property of all, could—after they had been knit together into a nation during the life of nearly a century by the

thousand processes which time and nature employ to cement and consolidate a people—by trade, by commerce, by railways, by social and business alliances, by common perils and sufferings in war, by the blessings, hopes and aspirations of peace,—could, after all this, at the will and pleasure of one of its parts, be instantly and peacefully resolved, not into its original elements, but into supposed constituent parts, most of which had had no participation in its original formation. That was a question which from its nature could be settled only by trial, and the trial has indeed forever settled that, and—strange thing in human history—neither side would wish the decision to be reversed. Nor should it be forgotten that, whatever the consequences, in the form of disunion or secession, the doctrine of Mr. Jefferson, as propounded in the Kentucky resolutions, might possibly involve, no such project was ever suggested, or in any manner countenanced, by him. Whatever discredit may be attached to any suggestions, in his day, of disunion or secession belongs altogether to his political opponents.

Are there any other respects in which it may be plausibly suggested that the political philosophy of Mr. Jefferson has been discredited by the teachings of experience? Does the General Government now need a larger delegation of power? Are there any functions hitherto performed by the States which should be relegated to the central authority? Do we need a large standing army? Must we confront

the gigantic naval armaments of the European nations with a corresponding array? Must we mingle in the ambitions of the great powers of the world? Must we extend the area of our territorial dominion? Must we look on and behold with unconcern the partitioning of Africa among the European powers, and the dismemberment of China? Must we assert before the world the might and majesty of seventy millions of the most energetic and productive people on the globe? Shall we form alliances with kindred peoples, or remain in calm and forbidding isolation among the nations? All these questions to which, if proposed in Mr. Jefferson's time, his teaching would have returned an answer in the negative, are likely to press themselves, if they are not already pressing themselves, upon the public attention.

Time, of course, does not permit me to indulge in any consideration of either of them; but I venture to express my conviction that unless the answer the American people make to them shall be consistent with those principles of which Mr. Jefferson has hitherto been regarded as the champion, there will be an end of true popular government among men. There is—there can be—but one true basis of liberty, and that lies in constantly cherishing the *dispersion* rather than the concentration of power. The individual loses something of his liberty the moment he clothes another with any power over himself. Nothing can justify the surrender except

the promise that by making it he better secures the liberty he retains. But with every new surrender of power there comes a peril. Power entrusted will sometimes be abused, and the temptation to abuse increases with the extent of the delegation. Liberty is safe when, and only when, for each delegation of power which is demanded a necessity is shown.

No; the fundamental political philosophy of Mr. Jefferson has not been discredited by time or experience. It never will be discredited while men retain a real love and a true comprehension of civil liberty. And never more than at the present time has there been a necessity for studying and teaching within the walls of universities the true principles of republican liberty and the practical art of applying them to human affairs. Recreant, indeed, would this University be to the fame of its founder, to the purposes for which it was established, and to its own obligations to present and to future times, if it failed to continue to maintain, not in the spirit of dogmatism, but of devotion to truth, those great principles upon which free popular government stands.

If anything were needed to impress upon patriotic minds the supreme importance of cultivating anew these principles and implanting in all hearts the determination to maintain them, it would be supplied by the extraordinary spectacle which our country exhibits at the present moment. We have voluntarily chosen to break the peace of the world

and engage in a war which already imposes a heavy burden upon the industry and resources of the nation, and which may become enlarged into gigantic proportions—a war undertaken not to repel aggression, but to check the disorders and relieve the oppressions to which a neighboring people have been subjected. It is, indeed, true that nations have their duties not only to themselves, but to the world; and these must be performed at whatever hazard. If we have not the virtue to perform them without sacrificing our own freedom, we have no right to be a republic. We believe, and have solemnly avowed, that we have taken this perilous step under the influence of those humane motives which civilization and humanity enjoin us to obey. For the sincerity of that avowal we must abide the judgment of civilized nations, and this will largely depend upon the consistency with that declaration which our future conduct shall exhibit. Even now the passion for national glory, growing by what it feeds upon, stimulated by the deeds of naval skill and daring on distant seas—deeds which reflect undying lustre on the American name and excite the admiration of the world—is indulging new visions of territorial aggrandizement.

But have a care, Americans! These national duties which call upon us to raise an avenging arm arise only in those rare alternatives when all else has proved to be ineffectual, and when we have good reason to know that such avenging arm will be

effectual. Have a care that among your ruling motives no place shall be allowed to the mere love of military and naval renown. The pathway marked out for the republic by its fathers was one of peaceful achievement. Its mission is peace. A free nation can rightfully have no other aspiration. But there are temptations which come with the possession of power. Men take pride in being the citizens of powerful nations, and enjoy the consciousness of strength. These temptations are to be resisted, for we may be sure that for any undue indulgence in them the price will be exacted with the certainty of fate; and this price is grinding taxation, the oppression of the poorer classes, the multiplication of the official corps, the intensifying of the struggle for the possession of governmental patronage and consequent spread of corruption, the increasing power of political bosses and chieftains, the decay of public and civic virtue, and the resulting danger of resorts to revolution. Let not our future confirm the sad lament of the misanthropic poet, that history has but one page which reads,

> "First Freedom, and then Glory—when that fails,
> Wealth, vice, corruption,—barbarism at last."

Here, then, of all places, let the true principles of liberty and free government, as expounded by Jefferson, be forever studied and taught. Let the youth of the land who are to resort hither here learn the true objects of national ambition and the methods by

which they are to be reached. Let them study here the new problems arising from the prodigious growth of the nation and its rapid material consolidation. Let them be taught the true principles of legislation, and by what methods liberty is best reconciled with order and with law; and above all let them learn to prefer for their country that renown among the nations which comes from the constant display of the love of peace and justice.

And the ancient Commonwealth of Virginia,—to what nobler object can she extend her favor and support than the building up upon this historic spot of a great university which shall be at once the home of the Sciences and the Arts and the nursery of political freedom? Outshining all her sister colonies in the splendor of her contribution to the galaxy of great names which adorns our Revolutionary history, how can she better perpetuate that glory than by sending forth from her own soil a new line of patriot statesmen? No jealousies will attend her efforts to this great end, and her sister States would greet with delight her re-ascending star once more blazing in the zenith of its own proper firmament.

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# Facsimile Inscriptions

Photo-engraving of Inscriptions that were written by Jefferson on the Fly leaves of Two Presentation Copies of the French Edition of his "Notes on Virginia"

# Facsimile Inscriptions

Photo-engraving of Inscriptions that were written by Jefferson on the Fly
leaves of Two Presentation Copies of the French Edition
of his "Notes on Virginia"

Th: Jefferson having had a few copies of these Notes printed to offer to some of his friends & to some other estimable characters beyond that line, begs Mr Barclay's acceptance of a copy. unwilling to expose them to the public eye, he asks the favor of Mr. Barclay to put them into the hands of no person on whose care & fidelity he cannot rely to guard them against publication.

Th. Jefferson begs Doctr. Price's acceptance of a copy of these Notes. the circumstances under which they were written, with the talents of the writer will account for their errors & deficts. the original was sent to Mons de Marbois in Decemb. 1781. being asked for a copy by a friend who wished to possess some of the details they contain he revised them in the subsequent winter. the vices however of their original composition were such as forbid material amendment he now has a few copies printed with a design of offering them to some of his friends, and to some other estimable characters beyond that line. a copy is presented to Doctr. Price as a testimony of the respect which the writer bears him. unwilling to expose them to the public eye. he asks the favor of Doctr. Price to put them into the hands of no person on whose care & fidelity he cannot rely to guard them against publication

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# NOTES ON VIRGINIA.

# INTRODUCTORY NOTES.

"Notes on Virginia" was written by Jefferson in answer to inquiries propounded to him by the Marquis de Barbé-Marbois, then Secretary of the French Legation in Philadelphia. Jefferson had 200 copies privately printed in Paris in 1784 (dated 1782) for distribution among his friends in Europe and America. No more authentic account could be given as to the origin of the "Notes on Virginia" than the account Jefferson gives us himself in his Autobiography. This account is as follows:

"Before I had left America, that is to say, in the year of 1781, I had received a letter from M. de Marbois, of the French legation in Philadelphia, informing me that he had been instructed by his government to obtain such statistical accounts of the different States of our Union, as might be useful for their information; and addressing to me a number of queries relative to the State of Virginia. I had always made it a practice, whenever an opportunity occurred, of obtaining any information of our country which might be of use to me in any station, public or private, to commit it to writing. These memoranda, were on loose papers, bundled up without order, and difficult of recurrence, when I had occasion for a particular one. I thought this a good occasion to embody their substance, which I did in the order of M. Marbois's queries, so as to answer his wish, and to arrange them for my own use. Some friends, to whom they were occasionally communicated, wished for copies; but their volume rendering this too laborious by hand, I proposed to get a few printed for their gratification. I was asked such a price, however, as exceeded the importance of the object. On my arrival at Paris, I found it could be done for a fourth of what I had been asked here. I, therefore, corrected and enlarged them, and had two hundred copies printed, under the title of 'Notes on Virginia.' I gave a very few copies to some particular persons in Europe, and sent the rest to my friends in America. An European copy, by the death of the owner, got into the hands of a bookseller, who engaged its translation, and, when ready for the press, communicated his intentions and manuscript to me, suggesting that I should correct it without asking any other permission for the publication. I never had seen so wretched an attempt at translation. Interverted, abridged, mutilated, and often reversing the sense of the original, I found it a blotch of errors from

beginning to end. I corrected some of the most material, and, in that form, it was printed in French. A London bookseller, on seeing the translation, requested me to permit him to print the English original. I thought it best to do so, to let the world see that it was not really so bad as the French translation had made it appear. And this is the true history of that publication."

The English publisher referred to by Jefferson is John Stockdale, who published an edition of the "Notes on Virginia" in 1787. Jefferson's preface to this English edition was as follows:

"The following Notes were written in Virginia in the year 1781, and somewhat corrected and enlarged in the winter of 1782, in answer to queries proposed to the Author, by a Foreigner of Distinction, then residing among us. The subjects are all treated imperfectly; some scarcely touched on. To apologize for this by developing the circumstances of the time and place of their composition, would be to open wounds which have already bled enough. To these circumstances some of their imperfections may with truth be ascribed; the great mass to the want of information and want of talents in the writer. He had a few copies printed, which he gave among his friends; and a translation of them has been lately published in France, but with such alterations as the laws of the press in that country rendered necessary. They are now offered to the public in their original form and language."

This edition included three "appendices" that Jefferson added after the publication of the original edition, and it was the first edition to announce the name of the author. It was at once reprinted in America, and apparently without Jefferson's consent. A German translation was issued in 1789. Another American reprint of the English edition seems to have been made with Jefferson's consent in 1794. During the years of 1797 and 1798 Jefferson wrote an "Appendix" relative to the murder of Logan's family, which was added to the edition of 1800. All subsequent editions, except that of 1853, are reprints of the text of 1787, supplemented by the "Appendix" relating to Logan.

Jefferson left at his death a printed copy of his "Notes on Virginia" containing a revision of the text and many manuscript notes. This copy was transferred by Jefferson's literary executor, Thomas Jefferson Randolph, to J. W. Randolph & Co., who based their edition of 1853 on Jefferson's final revision.

In the preface of this edition the publishers, in contrast to Jefferson's low estimate of his work, declared that "the beauty of style, the accuracy of information, and the scientific research displayed in the 'Notes' have made them a permanent part of our national literature."

# JEFFERSON'S WORKS.

## NOTES ON VIRGINIA.

### QUERY I.

*An exact description of the limits and boundaries of the State of Virginia?*

*Virginia* is bounded on the east by the Atlantic; on the north by a line of latitude crossing the eastern shore through Watkin's Point, being about 37° 57′ north latitude; from thence by a straight line to Cinquac, near the mouth of Potomac; thence by the Potomac, which is common to Virginia and Maryland, to the first fountain of its northern branch; thence by a meridian line, passing through that fountain till it intersects a line running east and west, in latitude 39° 43′ 42.4″ which divides Maryland from Pennsylvania, and which was marked by Messrs. Mason and Dixon; thence by that line, and a continuation of it westwardly to the completion of five degrees of longitude from the eastern boundary of Pennsylvania, in the same latitude, and thence by a meridian line to the Ohio; on the

west by the Ohio and Mississippi, to latitude 36° 30′ north, and on the south by the line of latitude last mentioned. By admeasurements through nearly the whole of this last line, and supplying the unmeasured parts from good data, the Atlantic and Mississippi are found in this latitude to be seven hundred and fifty-eight miles distant, equal to 30° 38′ of longitude, reckoning fifty-five miles and three thousand one hundred and forty-four feet to the degree. This being our comprehension of longitude, that of our latitude, taken between this and Mason and Dixon's line, is 3° 13′ 42.4″ equal to two hundred and twenty-three and one-third miles, supposing a degree of a great circle to be sixty-nine miles, eight hundred and sixty-four feet, as computed by Cassina. These boundaries include an area somewhat triangular of one hundred and twenty-one thousand five hundred and twenty-five square miles, whereof seventy-nine thousand six hundred and fifty lie westward of the Alleghany mountains, and fifty-seven thousand and thirty-four westward of the meridian of the mouth of the Great Kanhaway. This State is therefore one-third larger than the islands of Great Britain and Ireland, which are reckoned at eighty-eight thousand three hundred and fifty-seven square miles.

These limits result from, 1. The ancient charters from the crown of England. 2. The grant of Maryland to the Lord Baltimore, and the subsequent determinations of the British court as to the extent

of that grant. 3. The grant of Pennsylvania to William Penn, and a compact between the general assemblies of the commonwealths of Virginia and Pennsylvania as to the extent of that grant. 4. The grant of Carolina, and actual location of its northern boundary, by consent of both parties. 5. The treaty of Paris of 1763. 6. The confirmation of the charters of the neighboring States by the convention of *Virginia* at the time of constituting their commonwealth. 7. The cession made by *Virginia* to Congress of all the lands to which they had title on the north side of the Ohio.

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## QUERY II.

*A notice of its rivers, rivulets, and how far they are navigable?*

An inspection of a map of *Virginia*, will give a better idea of the geography of its rivers, than any description in writing. Their navigation may be imperfectly noted.

*Roanoke*, so far as it lies within the State, is nowhere navigable but for canoes, or light batteaux; and even for these in such detached parcels as to have prevented the inhabitants from availing themselves of it at all.

*James River*, and its waters, afford navigation as follows:

The whole of *Elizabeth River*, the lowest of those which run into James River, is a harbor, and would

contain upwards of three hundred ships. The channel is from one hundred and fifty to two hundred fathoms wide, and at common flood tide affords eighteen feet water to Norfolk. The Stafford, a sixty gun ship, went there, lightening herself to cross the bar at Sowel's Point. The Fier Rodrigue, pierced for sixty-four guns, and carrying fifty, went there without lightening. Craney Island, at the mouth of this river, commands its channel tolerably well.

*Nansemond River* is navigable to Sleepy Hole for vessels of two hundred and fifty tons; to Suffolk for those of one hundred tons; and to Milner's for those of twenty-five.

*Pagan Creek* affords eight or ten feet water to Smithfield, which admits vessels of twenty tons.

*Chickahominy* has at its mouth a bar, on which is only twelve feet water at common flood tide. Vessels passing that, may go eight miles up the river; those of ten feet draught may go four miles further, and those of six tons burden twenty miles further.

*Appomattox* may be navigated as far as Broadways, by any vessel which has crossed Harrison's bar in James River; it keeps eight or ten feet water a mile or two higher up to Fisher's bar, and four feet on that and upwards to Petersburg, where all navigation ceases.

*James River* itself affords a harbor for vessels of any size in Hampton Road, but not in safety through the whole winter; and there is navigable water for

them as far as Mulberry Island. A forty gun ship goes to Jamestown, and, lightening herself, may pass Harrison's bar; on which there is only fifteen feet water. Vessels of two hundred and fifty tons may go to Warwick; those of one hundred and twenty-five go to Rocket's, a mile below Richmond; from thence is about seven feet water to Richmond; and about the centre of the town, four feet and a half, where the navigation is interrupted by falls, which in a course of six miles, descend about eighty-eight feet perpendicular; above these it is resumed in canoes and batteaux, and is prosecuted safely and advantageously to within ten miles of the Blue Ridge; and even through the Blue Ridge a ton weight has been brought; and the expense would not be great, when compared with its object, to open a tolerable navigation up Jackson's river and Carpenter's creek, to within twenty-five miles of Howard's creek of Green Briar, both of which have then water enough to float vessels into the Great Kanhaway. In some future state of population I think it possible that its navigation may also be made to interlock with that of the Potomac, and through that to communicate by a short portage with the Ohio. It is to be noted that this river is called in the maps *James River*, only to its confluence with the Rivanna; thence to the Blue Ridge it is called the Fluvanna; and thence to its source Jackson's river. But in common speech, it is called James River to its source.

The *Rivanna*, a branch of James River, is navigable for canoes and batteaux to its intersection with the South-West mountains, which is about twenty-two miles; and may easily be opened to navigation through these mountains to its fork above Charlottesville.

*York River*, at Yorktown, affords the best harbor in the State for vessels of the largest size. The river there narrows to the width of a mile, and is contained within very high banks, close under which vessels may ride. It holds four fathom water at high tide for twenty-five miles above York to the mouth of Poropotank, where the river is a mile and a half wide, and the channel only seventy-five fathom, and passing under a high bank. At the confluence of *Pamunkey* and *Mattapony*, it is reduced to three fathom depth, which continues up Pamunkey to Cumberland, where the width is one hundred yards, and up Mattapony to within two miles of Frazier's ferry, where it becomes two and a half fathom deep, and holds that about five miles. Pamunkey is then capable of navigation for loaded flats to Brockman's bridge, fifty miles above Hanover town, and Mattapony to Downer's bridge, seventy miles above its mouth.

*Piankatank*, the little rivers making out of *Mobjack Bay* and those of the eastern shore, receive only very small vessels, and these can but enter them.

*Rappahannock* affords four fathom water to Hobb's hole, and two fathom from thence to Fredericksburg.

*Potomac* is seven and a half miles wide at the mouth; four and a half at Nomony bay; three at Aquia; one and a half at Hallowing point; one and a quarter at Alexandria. Its soundings are seven fathom at the mouth; five at St. George's island; four and a half at Lower Matchodic; three at Swan's point, and thence up to Alexanderia; thence ten feet water to the falls, which are thirteen miles above Alexandria. These falls are fifteen miles in length, and of very great descent, and the navigation above them for batteaux and canoes is so much interrupted as to be little used. It is, however, used in a small degree up the Cohongoronta branch as far as fort Cumberland, which was at the mouth of Willis's creek and is capable, at no great expense, of being rendered very practicable. The Shenandoah branch interlocks with James river about the Blue Ridge, and may perhaps in future be opened.

The *Mississippi* will be one of the principal channels of future commerce for the country westward of the Alleghany. From the mouth of this river to where it receives the Ohio, is one thousand miles by water, but only five hundred by land, passing through the Chickasaw country. From the mouth of the Ohio to that of the Missouri, is two hundred and thirty miles by water, and one hundred and forty by land, from thence to the mouth of the Illinois river, is about twenty-five miles. The Mississippi, below the mouth of the Missouri, is always muddy, and abounding with sand bars, which

frequently change their places. However, it carries fifteen feet water to the mouth of the Ohio, to which place it is from one and a half to two miles wide, and thence to Kaskaskia from one mile to a mile and a quarter wide. Its current is so rapid, that it never can be stemmed by the force of the wind alone, acting on sails. Any vessel, however, navigated with oars, may come up at any time, and receive much aid from the wind. A batteau passes from the mouth of Ohio to the mouth of Mississippi in three weeks, and is from two to three months getting up again. During its floods, which are periodical as those of the Nile, the largest vessels may pass down it, if their steerage can be insured. These floods begin in April, and the river returns into its banks early in August. The inundation extends further on the western than eastern side, covering the lands in some places for fifty miles from its banks. Above the mouth of the Missouri it becomes much such a river as the Ohio, like it clear and gentle in its current, not quite so wide, the period of its floods nearly the same, but not rising to so great a height. The streets of the village at Cohoes are not more than ten feet above the ordinary level of the water, and yet were never overflowed. Its bed deepens every year. Cohoes, in the memory of many people now living, was insulated by every flood of the river. What was the eastern channel has now become a lake, nine miles in length and one in width, into which the river at this day never flows. This

river yields turtle of a peculiar kind, perch, trout, gar, pike, mullets, herrings, carp, spatula-fish of fifty pounds weight, cat-fish of one hundred pounds weight, buffalo fish, and sturgeon. Alligators or crocodiles have been seen as high up as the Acansas. It also abounds in herons, cranes, ducks, brant, geese, and swans. Its passage is commanded by a fort established by this State, five miles below the mouth of the Ohio, and ten miles above the Carolina boundary.

The Missouri, since the treaty of Paris, the Illinois and northern branches of the Ohio, since the cession to Congress, are no longer within our limits. Yet having been so heretofore, and still opening to us channels of extensive communication with the western and north-western country, they shall be noted in their order.

The *Missouri* is, in fact, the principal river, contributing more to the common stream than does the Mississippi, even after its junction with the Illinois. It is remarkably cold, muddy, and rapid. Its overflowings are considerable. They happen during the months of June and July. Their commencement being so much later than those of the Mississippi, would induce a belief that the sources of the Missouri are northward of those of the Mississippi, unless we suppose that the cold increases again with the ascent of the land from the Mississippi westwardly. That this ascent is great, is proved by the rapidity of the river. Six miles above the mouth,

it is brought within the compass of a quarter of a mile's width; yet the Spanish merchants at Pancore, or St. Louis, say they go two thousand miles up it. It heads far westward of the Rio Norte, or North River. There is, in the villages of Kaskaskia, Cohoes, and St. Vincennes, no inconsiderable quantity of plate, said to have been plundered during the last war by the Indians from the churches and private houses of Santa Fé, on the North river, and brought to the villages for sale. From the mouth of the Ohio to Sante Fé are forty days journey, or about one thousand miles. What is the shortest distance between the navigable waters of the Missouri, and those of the North river, or how far this is navigable above Sante Fé, I could never learn. From Santa Fé to its mouth in the Gulf of Mexico is about twelve hundred miles. The road from New Orleans to Mexico crosses this river at the post of Rio Norte, eight hundred miles below Santa Fé, and from this post to New Orleans is about twelve hundred miles; thus making two thousand miles between Santa Fé and New Orleans, passing down the North river, Red river, and Mississippi; whereas it is two thousand two hundred and thirty through the Missouri and Mississippi. From the same post of Rio Norte, passing near the mines of La Sierra and Laiguana, which are between the North river, and the river Salina to Sartilla, is three hundred and seventy-five miles, and from thence, passing the mines of Charcas, Zaccatecas, and Potosi, to the

city of Mexico, is three hundred and seventy-five miles; in all, one thousand five hundred and fifty miles from Santa Fé to the city of Mexico. From New Orleans to the city of Mexico is about one thousand nine hundred and fifty miles; the roads after setting out from the Red river, near Natchitoches, keeping generally parallel with the coast, and about two hundred miles from it, till it enters the city of Mexico.

The *Illinois* is a fine river, clear, gentle, and without rapids; insomuch that it is navigable for batteaux to its source. From thence is a portage of two miles only to the Chicago, which affords a batteau navigation of sixteen miles to its entrance into lake Michigan. The Illinois, about ten miles above its mouth, is three hundred yards wide.

The *Kaskaskia* is one hundred yards wide at its entrance into the Mississippi, and preserves that breadth to the Buffalo plains, seventy miles above. So far, also, it is navigable for loaded batteaux, and perhaps much further. It is not rapid.

The *Ohio* is the most beautiful river on earth. Its current gentle, waters clear, and bosom smooth and unbroken by rocks and rapids, a single instance only excepted.

It is one-quarter of a mile wide at Fort Pitt, five hundred yards at the mouth of the Great Kanhaway, one mile and twenty-five poles at Louisville, one-quarter of a mile on the rapids three or four miles below Louisville, half a mile where the low country

begins, which is twenty miles above Green river, a mile and a quarter at the receipt of the Tennessee, and a mile wide at the mouth.

Its length, as measured according to its meanders by Captain Hutchins, is as follows:—

From Fort Pitt

| | | | |
|---|---|---|---|
| To Log's Town | 18½ | Little Miami | 126¼ |
| Big Beaver Creek | 10¾ | Licking Creek | 8 |
| Little Beaver Creek | 13½ | Great Miami | 26¾ |
| Yellow Creek | 11¾ | Big Bones | 32½ |
| Two Creeks | 21¾ | Kentucky | 44¼ |
| Long Reach | 53¾ | Rapids | 77¼ |
| End Long Reach | 16½ | Low Country | 155¾ |
| Muskingum | 25½ | Buffalo River | 64½ |
| Little Kanhaway | 12¼ | Wabash | 97¼ |
| Hockhocking | 16 | Big Cave | 42¾ |
| Great Kanhaway | 82½ | Shawanee River | 52½ |
| Guiandot | 43¾ | Cherokee River | 13 |
| Sandy Creek | 14½ | Massac | 11 |
| Sioto | 48¼ | Mississippi | 46 |
| | | | 1188 |

In common winter and spring tides it affords fifteen feet water to Louisville, ten feet to Le Tarte's rapids, forty miles above the mouth of the great Kanhaway, and a sufficiency at all times for light batteaux and canoes to Fort Pitt. The rapids are in latitude 38° 8′. The inundations of this river begin about the last of March, and subside in July. During these, a first-rate man-of-war may be carried from Louisville to New Orleans, if the sudden turns of the river and the strength of its current will admit a safe steerage. The rapids at Louisville descend about thirty feet in a length of a mile and a half.

The bed of the river there is a solid rock, and is divided by an island into two branches, the southern of which is about two hundred yards wide, and is dry four months in the year. The bed of the northern branch is worn into channels by the constant course of the water, and attrition of the pebble stones carried on with that, so as to be passable for batteaux through the greater part of the year. Yet it is thought that the southern arm may be the most easily opened for constant navigation. The rise of the waters in these rapids does not exceed ten or twelve feet. A part of this island is so high as to have been never overflowed, and to command the settlement at Louisville, which is opposite to it. The fort, however, is situated at the head of the falls. The ground on the south side rises very gradually.

The *Tennessee*, Cherokee, or Hogohege river, is six hundred yards wide at its mouth, a quarter of a mile at the mouth of Holston, and two hundred yards at Chotee, which is twenty miles above Holston, and three hundred miles above the mouth of the Tennessee. This river crosses the southern boundary of Virginia, fifty-eight miles from the Mississippi. Its current is moderate. It is navigable for loaded boats of any burden to the Muscle shoals, where the river passes through the Cumberland mountain. These shoals are six or eight miles long, passable downwards for loaded canoes, but not upwards, unless there be a swell in the river.

Above these the navigation for loaded canoes and batteaux continues to the Long island. This river has its inundations also. Above the Chickamogga towns is a whirlpool called the Sucking-pot, which takes in trunks of trees or boats, and throws them out again half a mile below. It is avoided by keeping very close to the bank, on the south side. There are but a few miles portage between a branch of this river and the navigable waters of the river Mobile, which runs into the Gulf of Mexico.

*Cumberland*, or Shawanee river, intersects the boundary between Virginia and North Carolina sixty-seven miles from the Mississippi, and again one hundred and ninety-eight miles from the same river, a little above the entrance of Obey's river into the Cumberland. Its Clear fork crosses the same boundary about three hundred miles from the Mississippi. Cumberland is a very gentle stream, navigable for loaded batteaux eight hundred miles, without interruption; then intervene some rapids of fifteen miles in length, after which it is again navigable seventy miles upwards, which brings you within ten miles of the Cumberland mountains. It is about one hundred and twenty yards wide through its whole course, from the head of its navigation to its mouth.

The *Wabash* is a very beautiful river, four hundred yards wide at the mouth, and three hundred at St. Vincennes, which is a post one hundred miles above the mouth, in a direct line. Within this

space there are two small rapids, which give very little obstruction to the navigation. It is four hundred yards wide at the mouth, and navigable thirty leagues upwards for canoes and small boats. From the mouth of Maple river to that of Eel river is about eighty miles in a direct line, the river continuing navigable, and from one to two hundred yards in width. The Eel river is one hundred and fifty yards wide, and affords at all times navigation for periaguas, to within eighteen miles of the Miami of the Lake. The Wabash, from the mouth of Eel river to Little river, a distance of fifty miles direct, is interrupted with frequent rapids and shoals, which obstruct the navigation, except in a swell. Little river affords navigation during a swell to within three miles of the Miami, which thence affords a similar navigation into Lake Erie, one hundred miles distant in a direct line. The Wabash overflows periodically in correspondence with the Ohio, and in some places two leagues from its banks.

*Green River* is navigable for loaded batteaux at all times fifty miles upwards; but it is then interrupted by impassable rapids, above which the navigation again commences and continues good thirty or forty miles to the mouth of Barren river.

*Kentucky River* is ninety yards wide at the mouth, and also at Boonsborough, eighty miles above. It affords a navigation for loaded batteaux one hundred and eighty miles in a direct line, in the winter tides.

The *Great Miami* of the Ohio, is two hundred yards wide at the mouth. At the Piccawee towns, seventy-five miles above, it is reduced to thirty yards; it is, nevertheless, navigable for loaded canoes fifty miles above these towns. The portage from its western branch into the Miami of Lake Erie, is five miles; that from its eastern branch into Sandusky river, is of nine miles.

*Salt River* is at all times navigable for loaded batteaux seventy or eighty miles. It is eighty yards wide at its mouth, and keeps that width to its fork, twenty-five miles above.

The *Little Miami* of the Ohio, is sixty or seventy yards wide at its mouth, sixty miles to its source, and affords no navigation.

The *Sioto* is two hundred and fifty yards wide at its mouth, which is in latitude 38° 22′, and at the Saltlick towns, two hundred miles above the mouth, it is yet one hundred yards wide. To these towns it is navigable for loaded batteaux, and its eastern branch affords navigation almost to its source.

*Great Sandy River* is about sixty yards wide, and navigable sixty miles for loaded batteaux.

*Guiandot* is about the width of the river last mentioned, but is more rapid. It may be navigated by canoes sixty miles.

The *Great Kanhaway* is a river of considerable note for the fertility of its lands, and still more, as leading towards the head waters of James river. Nevertheless, it is doubtful whether its great and

numerous rapids will admit a navigation, but at an expense to which it will require ages to render its inhabitants equal. The great obstacles begin at what are called the Great Falls, ninety miles above the mouth, below which are only five or six rapids, and these passable, with some difficulty, even at low water. From the falls to the mouth of Greenbriar is one hundred miles, and thence to the lead mines one hundred and twenty. It is two hundred and eighty yards wide at its mouth.

*Hockhocking* is eighty yards wide at its mouth, and yields navigation for loaded batteaux to the Press-place, sixty miles above its mouth.

The *Little Kanhaway* is one hundred and fifty yards wide at the mouth. It yields a navigation of ten miles only. Perhaps its northern branch, called Junius' creek, which interlocks with the western of Monongahela, may one day admit a shorter passage from the latter into the Ohio.

The *Muskingum* is two hundred and eighty yards wide at its mouth, and two hundred yards at the lower Indian towns, one hundred and fifty miles upwards. It is navigable for small batteaux to within one mile of a navigable part of Cuyahoga river, which runs into Lake Erie.

At Fort Pitt the river Ohio loses its name, branching into the Monongahela and Alleghany.

The *Monongahela* is four hundred yards wide at its mouth. From thence is twelve or fifteen miles to the mouth of Yohogany, where it is three hundred

yards wide. Thence to Redstone by water is fifty miles, by land thirty. Then to the mouth of Cheat river by water forty miles, by land twenty-eight, the width continuing at three hundred yards, and the navigation good for boats. Thence the width is about two hundred yards to the western fork, fifty miles higher, and the navigation frequently interrupted by rapids, which, however, with a swell of two or three feet, become very passable for boats. It then admits light boats, except in dry seasons, sixty-five miles further to the head of Tygart's valley, presenting only some small rapids and falls of one or two feet perpendicular, and lessening it its width to twenty yards. The *Western fork* is navigable in the winter ten or fifteen miles towards the nothern of the Little Kanhaway, and will admit a good wagon road to it. The *Yohogany* is the principal branch of this river. It passes through the Laurel mountain, about thirty miles from its mouth; is so far from three hundred to one hundred and fifty yards wide, and the navigation much obstructed in dry weather by rapids and shoals. In its passage through the mountain it makes very great falls, admitting no navigation for ten miles to the Turkey Foot. Thence to the Great Crossing, about twenty miles, it is again navigable, except in dry seasons, and at this place is two hundred yards wide. The sources of this river are divided from those of the Potomac by the Alleghany mountain. From the falls, where it intersects the Laurel mountain, to

Fort Cumberland, the head of the navigation on the Potomac, is forty miles of very mountainous road. Wills' creek, at the mouth of which was Fort Cumberland, is thirty or forty yards wide, but affords no navigation as yet. *Cheat* river, another considerable branch of the Monongahela, is two hundred yards wide at its mouth, and one hundred yards at the *Dunkard's* settlement, fifty miles higher. It is navigable for boats, except in dry seasons. The boundary between Virginia and Pennsylvania crosses it about three or four miles above its mouth.

The *Alleghany* river, with a slight swell, affords navigation for light batteaux to Venango, at the mouth of French Creek, where it is two hundred yards wide, and is practised even to Le Bœuf, from whence there is a portage of fifteen miles to Presque Isle on the Lake Erie.

The country watered by the Mississippi and its eastern branches, constitutes five-eighths of the United States, two of which five-eighths are occupied by the Ohio and its waters; the residuary streams which run into the Gulf of Mexico, the Atlantic, and the St. Lawrence, water the remaining three-eighths.

Before we quit the subject of the western waters, we will take a view of their principal connections with the Atlantic. These are three; the Hudson river, the Potomac, and the Mississippi itself. Down the last will pass all heavy commodities. But the navigation through the Gulf of Mexico is so dangerous, and that up the Mississippi so difficult and tedious,

that it is thought probable that European merchandise will not return through that channel. It is most likely that flour, timber, and other heavy articles will be floated on rafts, which will themselves be an article for sale as well as their loading, the navigators returning by land, or in light batteaux. There will, therefore, be a competition between the Hudson and Potomac rivers for the residue of the commerce of all the country westward of Lake Erie, on the waters of the lakes, of the Ohio, and upper parts of the Mississippi. To go to New York, that part of the trade which comes from the lakes or their waters, must first be brought into Lake Erie. Between Lake Superior and its waters and Huron, are the rapids of St. Mary, which will permit boats to pass, but not larger vessels. Lakes Huron and Michigan afford communication with Lake Erie by vessels of eight feet draught. That part of the trade which comes from the waters of the Mississippi must pass from them through some portage into the waters of the lakes. The portage from the Illinois river into a water of Michigan is of one mile only. From the Wabash, Miami, Muskingum, or Alleghany, are portages into the waters of Lake Erie, of from one to fifteen miles. When the commodities are brought into, and have passed through Lake Erie, there is between that and Ontario an interruption by the falls of Niagara, where the portage is of eight miles; and between Ontario and the Hudson river are portages at the falls of Onondago, a little above

Oswego, of a quarter of a mile; from Wood creek to the Mohawks river two miles; at the little falls of the Mohawks river half a mile; and from Schenectady to Albany sixteen miles. Besides the increase of expense occasioned by frequent change of carriage, there is an increased risk of pillage produced by committing merchandise to a greater number of hands successively. The Potomac offers itself under the following circumstances: For the trade of the lakes and their waters westward of Lake Erie, when it shall have entered that lake, it must coast along its southern shore, on account of the number and excellence of its harbors; the northern, though shortest, having few harbors, and these unsafe. Having reached Cuyahoga, to proceed on to New York it will have eight hundred and twenty-five miles and five portages; whereas it is but four hundred and twenty-five miles to Alexandria, its emporium on the Potomac, if it turns into the Cuyahoga, and passes through that, Big Beaver, Ohio, Yohogany, (or Monongahela and Cheat,) and Potomac, and there are but two portages; the first of which, between Cuyahoga and Beaver, may be removed by uniting the sources of these waters, which are lakes in the neighborhood of each other, and in a champaign country; the other from the waters of Ohio to Potomac will be from fifteen to forty miles, according to the trouble which shall be taken to approach the two navigations. For the trade of the Ohio, or that which shall come into it from its own waters

or the Mississippi, it is nearer through the Potomac to Alexandria than to New York by five hundred and eighty miles, and it is interrupted by one portage only. There is another circumstance of difference, too. The lakes themselves never freeze, but the communications between them freeze, and the Hudson river is itself shut up by the ice three months in the year; whereas the channel to the Chesapeake leads directly into a warmer climate. The southern parts of it very rarely freeze at all, and whenever the northern do, it is so near the sources of the rivers, that the frequent floods to which they are there liable, break up the ice immediately, so that vessels may pass through the whole winter, subject only to accidental and short delays. Add to all this, that in case of war with our neighbors, the Anglo-Americans or the Indians, the route to New York becomes a frontier through almost its whole length, and all commerce through it ceases from that moment. But the channel to New York is already known to practice, whereas the upper waters of the Ohio and the Potomac, and the great falls of the latter, are yet to be cleared of their fixed obstructions. See Appendix (A.)

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QUERY III.

*A notice of the best Seaports of the State, and how big are the vessels they can receive?*

Having no ports but our rivers and creeks, this *Query* has been answered under the preceding one.

## QUERY IV.

### *A notice of its Mountains ?*

For the particular geography of our mountains I must refer to Fry and Jefferson's map of Virginia; and to Evans' analysis of this map of America, for a more philosophical view of them than is to be found in any other work. It is worthy of notice, that our mountains are not solitary and scattered confusedly over the face of the country; but that they commence at about one hundred and fifty miles from the sea-coast, are disposed in ridges, one behind another, running nearly parallel with the sea-coast, though rather approaching it as they advance north-eastwardly. To the south-west, as the tract of country between the sea-coast and the Mississippi becomes narrower, the mountains converge into a single ridge, which, as it approaches the Gulf of Mexico, subsides into plain country, and gives rise to some of the waters of that gulf, and particularly to a river called the Apalachicola, probably from the Apalachies, an Indian nation formerly residing on it. Hence the mountains giving rise to that river, and seen from its various parts, were called the Apalachian mountains, being in fact the end or termination only of the great ridges passing through the continent. European geographers, however, extended the name northwardly as far as the mountains extended; some giving it, after their separation into different ridges, to the Blue Ridge, others

to the North Mountain, others to the Alleghany, others to the Laurel Ridge, as may be seen by their different maps. But the fact I believe is, that none of these ridges were ever known by that name to the inhabitants, either native or emigrant, but as they saw them so called in European maps. In the same direction, generally, are the veins of limestone, coal, and other minerals hitherto discovered; and so range the falls of our great rivers. But the courses of the great rivers are at right angles with these. James and Potomac penetrate through all the ridges of mountains eastward of the Alleghany; that is, broken by no water course. It is in fact the spine of the country between the Atlantic on one side, and the Mississippi and St. Lawrence on the other. The passage of the Potomac through the Blue Ridge is, perhaps, one of the most stupendous scenes in nature. You stand on a very high point of land. On your right comes up the Shenandoah, having ranged along the foot of the mountain an hundred miles to seek a vent. On your left approaches the Potomac, in quest of a passage also. In the moment of their junction, they rush together against the mountain, rend it asunder, and pass off to the sea. The first glance of this scene hurries our senses into the opinion, that this earth has been created in time, that the mountains were formed first, that the rivers began to flow afterwards, that in this place, particularly, they have been dammed up by the Blue Ridge of mountains, and have formed

an ocean which filled the whole valley; that continuing to rise they have at length broken over at this spot, and have torn the mountain down from its summit to its base. The piles of rock on each hand, but particularly on the Shenandoah, the evident marks of their disrupture and avulsion from their beds by the most powerful agents of nature, corroborate the impression. But the distant finishing which nature has given to the picture, is of a very different character. It is a true contrast to the foreground. It is as placid and delightful as that is wild and tremendous. For the mountain being cloven asunder, she presents to your eye, through the cleft, a small catch of smooth blue horizon, at an infinite distance in the plain country, inviting you, as it were, from the riot and tumult roaring around, to pass through the breach and participate of the calm below. Here the eye ultimately composes itself; and that way, too, the road happens actually to lead. You cross the Potomac above the junction, pass along its side through the base of the mountain for three miles, its terrible precipices hanging in fragments over you, and within about twenty miles reach Fredericktown, and the fine country round that. This scene is worth a voyage across the Atlantic. Yet here, as in the neighborhood of the Natural Bridge, are people who have passed their lives within half a dozen miles, and have never been to survey these monuments of a war between rivers and mountains, which must have shaken the earth itself to its centre. See Appendix (B.)

The height of our mountains has not yet been estimated with any degree of exactness. The Alleghany being the great ridge which divides the waters of the Atlantic from those of the Mississippi, its summit is doubtless more elevated above the ocean than that of any other mountain. But its relative height, compared with the base on which it stands, is not so great as that of some others, the country rising behind the successive ridges like the steps of stairs. The mountains of the Blue Ridge, and of these the Peaks of Otter, are thought to be of a greater height, measured from their base, than any others in our country, and perhaps in North America. From data, which may found a tolerable conjecture, we suppose the highest peak to be about four thousand feet perpendicular, which is not a fifth part of the height of the mountains of South America, nor one-third of the height which would be necessary in our latitude to preserve ice in the open air unmelted through the year. The ridge of mountains next beyond the Blue Ridge, called by us the North mountain, is of the greatest extent; for which reason they were named by the Indians the endless mountains.

A substance supposed to be Pumice, found floating on the Mississippi, has induced a conjecture that there is a volcano on some of its waters; and as these are mostly known to their sources, except the Missouri, our expectations of verifying the conjecture would of course be led to the mountains which divide the waters of the Mexican Gulf from those of the

South Sea; but no volcano having ever yet been known at such a distance from the sea, we must rather suppose that this floating substance has been erroneously deemed Pumice.

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## QUERY V.

### *Its Cascades and Caverns ?*

The only remarkable cascade in this country is that of the Falling Spring in Augusta. It is a water of James' river where it is called Jackson's river, rising in the warm spring mountains, about twenty miles southwest of the warm spring, and flowing into that valley. About three-quarters of a mile from its source it falls over a rock two hundred feet into the valley below. The sheet of water is broken in its breadth by the rock, in two or three places, but not at all in its height. Between the sheet and the rock, at the bottom, you may walk across dry. This cataract will bear no comparison with that of Niagara as to the quantity of water composing it; the sheet being only twelve or fifteen feet wide above and somewhat more spread below; but it is half as high again, the latter being only one hundred and fifty-six feet, according to the mensuration made by order of M. Vaudreuil, Governor of Canada, and one hundred and thirty according to a more recent account.

In the lime-stone country there are many caverns of very considerable extent. The most noted is called Madison's Cave, and is on the north side of

the Blue Ridge, near the intersection of the Rockingham and Augusta line with the south fork of the southern river of Shenandoah. It is in a hill of about two hundred feet perpendicular height, the ascent of which, on one side, is so steep that you may pitch a biscuit from its summit into the river which washes its base. The entrance of the cave is, in this side, about two-thirds of the way up. It extends into the earth about three hundred feet, branching into subordinate caverns, sometimes ascending a little, but more generally descending, and at length terminates, in two different places, at basons of water of unknown extent, and which I should judge to be nearly on a level with the water

An eye-draught of Madison's Cave of 67 feet to the inch. The arrows show where it descends or ascends.

of the river; however, I do not think they are formed by refluent water from that, because they are never turbid; because they do not rise and fall in correspondence with that in times of flood or of drought; and because the water is always cool. It is probably one of the many reservoirs with which the interior parts of the earth are supposed to abound, and yield supplies to the fountains of water, distinguished from others only by being accessible. The vault of this cave is of solid lime-stone, from twenty to forty or fifty feet high; through which water is continually percolating. This, trickling down the sides of the cave, has incrusted them over in the form of elegant drapery; and dripping from the top of the vault generates on that and on the base below, stalactites of a conical form, some of which have met and formed massive columns.

Another of these caves is near the North mountain, in the county of Frederic, on the lands of Mr. Zane. The entrance into this is on the top of an extensive ridge. You descend thirty or forty feet, as into a well, from whence the cave extends, nearly horizontally, four hundred feet into the earth, preserving a breadth of from twenty to fifty feet, and a height of from five to twelve feet. After entering this cave a few feet, the mercury, which in the open air was 50°, rose to 57° of Fahrenheit's thermometer, answering to 11° of Reaumur's, and it continued at that to the remotest parts of the cave. The uniform temperature of the cellars of the observa-

tory of Paris, which are ninety feet deep, and of all subterraneous cavities of any depth, where no chemical agencies may be supposed to produce a factitious heat, has been found to be 10° of Reaumur, equal to 54½° of Fahrenheit. The temperature of the cave above mentioned so nearly corresponds with this, that the difference may be ascribed to a difference of instruments.

At the Panther gap, in the ridge which divides the waters of the Crow and the Calf pasture, is what is called the *Blowing Cave*. It is in the side of a hill, is of about one hundred feet diameter, and emits constantly a current of air of such force as to keep the weeds prostrate to the distance of twenty yards before it. This current is strongest in dry, frosty weather, and in long spells of rain weakest. Regular inspirations and expirations of air, by caverns and fissures, have been probably enough accounted for by supposing them combined with intermitting fountains; as they must of course inhale air while their reservoirs are emptying themselves, and again emit it while they are filling. But a constant issue of air, only varying in its force as the weather is drier or damper, will require a new hypothesis. There is another blowing cave in the Cumberland mountain, about a mile from where it crosses the Carolina line. All we know of this is, that it is not constant, and that a fountain of water issues from it.

The *Natural Bridge*, the most sublime of nature's works, though not comprehended under the present

head, must not be pretermitted. It is on the ascent of a hill, which seems to have been cloven through its length by some great convulsion. The fissure, just at the bridge, is, by some admeasurements, two hundred and seventy feet deep, by others only two hundred and five. It is about forty-five feet wide at the bottom and ninety feet at the top; this of course determines the length of the bridge, and its height from the water. Its breadth in the middle is about sixty feet, but more at the ends, and the thickness of the mass, at the summit of the arch, about forty feet. A part of this thickness is constituted by a coat of earth, which gives growth to many large trees. The residue, with the hill on both sides, is one solid rock of lime-stone. The arch approaches the semi-elliptical form; but the larger axis of the ellipsis, which would be the cord of the arch, is many times longer than the transverse. Though the sides of this bridge are provided in some parts with a parapet of fixed rocks, yet few men have resolution to walk to them, and look over into the abyss. You involuntarily fall on your hands and feet, creep to the parapet, and peep over it. Looking down from this height about a minute, gave me a violent head-ache. If the view from the top be painful and intolerable, that from below is delightful in an equal extreme. It is impossible for the emotions arising from the sublime to be felt beyond what they are here; so beautiful an arch, so elevated, so light, and springing as it were up to heaven! The

rapture of the spectator is really indescribable! The fissure continuing narrow, deep, and straight, for a considerable distance above and below the bridge, opens a short but very pleasing view of the North mountain on one side and the Blue Ridge on the other, at the distance each of them of about five miles. This bridge is in the county of Rockbridge, to which it has given name, and affords a public and commodious passage over a valley which cannot be crossed elsewhere for a considerable distance. The stream passing under it is called Cedar creek. It is a water of James' river, and sufficient in the driest seasons to turn a grist-mill, though its fountain is not more than two miles above.[1]

[1] Don Ulloa mentions a break, similar to this, in the province of Angaraez, in South America. It is from sixteen to twenty-two feet wide, one hundred and eleven feet deep, and of 1.3 miles continuance, English measure. Its breadth at top is not sensibly greater than at bottom. But the following fact is remarkable, and will furnish some light for conjecturing the probable origin of our natural bridge. "Esta caxa, ó cauce está cortada en péna viva con tanta precision, que las desigualdades del un lado entrantes, corresponden á las del otro lado salientes, como si aquella altura se hubiese abierto expresamente, con sus bueltas y tortuosidades, para darle transito á los aguas por entre los dos morallones que la forman; siendo tal su igualdad, que si llegasen á juntarse se endentarian uno con otro sin dextar hueco." Not. Amer. ii. § 10. Don Ulloa inclines to the opinion that this channel has been effected by the wearing of the water which runs through it, rather than that the mountain should have been broken open by any convulsion of nature. But if it had been worn by the running of water, would not the rocks which form the sides, have been worn plain? or if, meeting in some parts with veins of harder stone, the water had left prominences on the one side, would not the same cause have sometimes, or perhaps generally, occasioned prominences on the other side also? Yet Don Ulloa tells us, that on the other side there are always corresponding cavities, and that these tally with the prominences so per-

## QUERY VI.

*A notice of the mines and other subterraneous riches; its trees, plants, fruits, etc.*

I knew a single instance of gold found in this State. It was interspersed in small specks through a lump of ore of about four pounds weight, which yielded seventeen pennyweights of gold, of extraordinary ductility. This ore was found on the north side of Rappahanoc, about four miles below the falls. I never heard of any other indication of gold in its neighborhood.

On the Great Kanhaway, opposite to the mouth of Cripple creek, and about twenty-five miles from our southern boundary, in the county of Montgomery, are mines of lead. The metal is mixed, sometimes with earth, and sometimes with rock, which requires the force of gunpowder to open it; and is accompanied with a portion of silver too small to be worth separation under any process hitherto attempted there. The proportion yielded is from fifty to eighty pounds of pure metal from one hun-

fectly, that, were the two sides to come together they would fit in all their indentures, without leaving any void. I think that this does not resemble the effect of running water, but looks rather as if the two sides had parted asunder. The sides of the break, over which is the natural bridge of Virginia, consisting of a veiny rock which yields to time, the correspondence between the salient and re-entering inequalities, if it existed at all, has now disappeared. This break has the advantage of the one described by Don Ulloa in its finest circumstance; no portion in that instance having held together, during the separation of the other parts, so as to form a bridge over the abyss.

dred pounds of washed ore. The most common is that of sixty to one hundred pounds. The veins are sometimes most flattering, at others they disappear suddenly and totally. They enter the side of the hill and proceed horizontally. Two of them are wrought at present by the public, the best of which is one hundred yards under the hill. These would employ about fifty laborers to advantage. We have not, however, more than thirty generally, and these cultivate their own corn. They have produced sixty tons of lead in the year; but the general quantity is from twenty to twenty-five tons. The present furnace is a mile from the ore bank and on the opposite side of the river. The ore is first wagoned to the river, a quarter of a mile, then laden on board of canoes and carried across the river, which is there about two hundred yards wide, and then again taken into wagons and carried to the furnace. This mode was originally adopted that they might avail themselves of a good situation on a creek for a pounding mill; but it would be easy to have the furnace and pounding mill on the same side of the river, which would yield water, without any dam, by a canal of about half a mile in length. From the furnace the lead is transported one hundred and thirty miles along a good road, leading through the peaks of Otter to Lynch's ferry, or Winston's on James' river, from whence it is carried by water about the same distance to Westham. This land carriage may be greatly shortened, by delivering the

lead on James' river, above the Blue Ridge, from whence a ton weight has been brought on two canoes. The Great Kanhaway has considerable falls in the neighborhood of the mines. About seven miles below are three falls, of three or four feet perpendicular each; and three miles above is a rapid of three miles continuance, which has been compared in its descent to the great falls of James' river. Yet it is the opinion, that they may be laid open for useful navigation, so as to reduce very much the portage between the Kanhaway and James' river.

A valuable lead mine is said to have been lately discovered in Cumberland, below the mouth of Red river. The greatest, however, known in the western country, are on the Mississippi, extending from the mouth of Rock river one hundred and fifty miles upwards. These are not wrought, the lead used in that country being from the banks on the Spanish side of the Mississippi, opposite to Kaskaskia.

A mine of copper was once opened in the county of Amherst, on the north side of James' river, and another in the opposite country, on the south side. However, either from bad management or the poverty of the veins, they were discontinued. We are told of a rich mine of native copper on the Ouabache, below the upper Wiaw.

The mines of iron worked at present are Callaway's, Ross's, and Ballendine's, on the south side of James' river; Old's on the north side, in Albemarle; Miller's in Augusta, and Zane's in Frederic.

These two last are in the valley between the Blue Ridge and North mountain. Callaway's, Ross's, Miller's, and Zane's make about one hundred and fifty tons of bar iron each, in the year. Ross's makes also about sixteen hundred tons of pig iron annually; Ballendine's one thousand; Callaway's, Miller's, and Zane's, about six hundred each. Besides these, a forge of Mr. Hunter's, at Fredericksburg, makes about three hundred tons a year of bar iron, from pigs imported from Maryland; and Taylor's forge on Neapsco of Potomac, works in the same way, but to what extent I am not informed. The indications of iron in other places are numerous, and dispersed through all the middle country. The toughness of the cast iron of Ross's and Zane's furnaces is very remarkable. Pots and other utensils, cast thinner than usual, of this iron, may be safely thrown into, or out of the wagons in which they are transported. Salt-pans made of the same, and no longer wanted for that purpose, cannot be broken up, in order to be melted again, unless previously drilled in many parts.

In the western country, we are told of iron mines between the Muskingum and Ohio; of others on Kentucky, between the Cumberland and Barren rivers, between Cumberland and Tennessee, on Reedy creek, near the Long Island, and on Chesnut creek, a branch of the Great Kanhaway, near where it crosses the Carolina line. What are called the iron banks, on the Mississippi, are believed, by a

good judge, to have no iron in them. In general, from what is hitherto known of that country, it seems to want iron.

Considerable quantities of black lead are taken occasionally for use from Winterham in the county of Amelia. I am not able, however, to give a particular state of the mine. There is no work established at it; those who want, going and procuring it for themselves.

The country on James' river, from fifteen to twenty miles above Richmond, and for several miles northward and southward, is replete with mineral coal of a very excellent quality. Being in the hands of many proprietors, pits have been opened, and, before the interruption of our commerce, were worked to an extent equal to the demand.

In the western country coal is known to be in so many places, as to have induced an opinion, that the whole tract between the Laurel mountain, Mississippi, and Ohio, yields coal. It is also known in many places on the north side of the Ohio. The coal at Pittsburg is of very superior quality. A bed of it at that place has been a-fire since the year 1765. Another coal-hill on the Pike-run of Monongahela has been a-fire ten years; yet it has burnt away about twenty yards only.

I have known one instance of an emerald found in this country. Amethysts have been frequent, and crystals common; yet not in such numbers any of them as to be worth seeking.

There is very good marble, and in very great abundance, on James' river, at the mouth of Rockfish. The samples I have seen, were some of them of a white as pure as one might expect to find on the surface of the earth; but most of them were variegated with red, blue, and purple. None of it has been ever worked. It forms a very large precipice, which hangs over a navigable part of the river. It is said there is marble at Kentucky.

But one vein of limestone is known below the Blue Ridge. Its first appearance, in our country, is in Prince William, two miles below the Pignut ridge of mountains; thence it passes on nearly parallel with that, and crosses the Rivanna about five miles below it, where it is called the South-west ridge. It then crosses Hard-ware, above the mouth of Hudson's creek; James' river at the mouth of Rockfish, at the marble quarry before spoken of, probably runs up that river to where it appears again at Ross's iron-works, and so passes off south-westwardly by Flat Creek of Otter river. It is never more than one hundred yards wide. From the Blue Ridge westwardly, the whole country seems to be founded on a rock of limestone, besides infinite quantities on the surface, both loose and fixed. This is cut into beds, which range, as the mountains and sea-coast do, from south-west to north-east, the lamina of each bed declining from the horizon towards a parallelism with the axis of the earth. Being struck with this observation, I made, with

a quadrant, a great number of trials on the angles of their declination, and found them to vary from 22° to 60°; but averaging all my trials, the result was within one-third of a degree of the elevation of the pole or latitude of the place, and much the greatest part of them taken separately were little different from that; by which it appears, that these lamina are, in the main, parallel with the axis of the earth. In some instances, indeed, I found them perpendicular, and even reclining the other way; but these were extremely rare, and always attended with signs of convulsion, or other circumstances of singularity, which admitted a possibility of removal from their original position. These trials were made between Madison's cave and the Potomac. We hear of limestone on the Mississippi and Ohio, and in all the mountainous country between the eastern and western waters, not on the mountains themselves, but occupying the valleys between them.

Near the eastern foot of the North mountain are immense bodies of *Schist*, containing impressions of shells in a variety of forms. I have received petrified shells of very different kinds from the first sources of Kentucky, which bear no resemblance to any I have ever seen on the tide-waters. It is said that shells are found in the Andes, in South America, fifteen thousand feet above the level of the ocean. This is considered by many, both of the learned and unlearned, as a proof of an universal

deluge. To the many considerations opposing this opinion, the following may be added: The atmosphere, and all its contents, whether of water, air, or other matter, gravitate to the earth; that is to say, they have weight. Experience tells us, that the weight of all these together never exceeds that of a column of mercury of thirty-one inches height, which is equal to one of rain water of thirty-five feet high. If the whole contents of the atmosphere, then, were water, instead of what they are, it would cover the globe but thirty-five feet deep; but as these waters, as they fell, would run into the seas, the superficial measure of which is to that of the dry parts of the globe, as two to one, the seas would be raised only fifty-two and a half feet above their present level, and of course would overflow the lands to that height only. In Virginia this would be a very small proportion even of the champaign country, the banks of our tide waters being frequently, if not generally, of a greater height. Deluges beyond this extent, then, as for instance, to the North mountain or to Kentucky, seem out of the laws of nature. But within it they may have taken place to a greater or less degree, in proportion to the combination of natural causes which may be supposed to have produced them. History renders probably some instances of a partial deluge in the country lying round the Mediterranean sea. It has been often[1] supposed, and it is not unlikely, that that sea was once a lake.

[1] 2 Buffon Epoques, 96.

While such, let us admit an extraordinary collection of the waters of the atmosphere from the other parts of the globe to have been discharged over that and the countries whose waters run into it. Or without supposing it a lake, admit such an extraordinary collection of the waters of the atmosphere, and an influx from the Atlantic ocean, forced by long-continued western winds. The lake, or that sea, may thus have been so raised as to overflow the low lands adjacent to it, as those of Egypt and Armenia, which, according to a tradition of the Egyptians and Hebrews, were overflowed about two thousand three hundred years before the Christian era; those of Attica, said to have been overflowed in the time of Ogyges, about five hundred years later; and those of Thessaly, in the time of Deucalion, still three hundred years posterior. But such deluges as these will not account for the shells found in the higher lands. A second opinion has been entertained, which is, that in times anterior to the records either of history or tradition, the bed of the ocean, the principal residence of the shelled tribe, has, by some great convulsion of nature, been heaved to the heights at which we now find shells and other marine animals. The favorers of this opinion do well to suppose the great events on which it rests to have taken place beyond all the eras of history; for within these, certainly, none such are to be found; and we may venture to say farther, that no fact has taken place, either in our own days, or in the thousands of years

recorded in history, which proves the existence of any natural agents, within or without the bowels of the earth, of force sufficient to heave, to the height of fifteen thousand feet, such masses as the Andes. The difference between the power necessary to produce such an effect, and that which shuffled together the different parts of Calabria in our days, is so immense, that from the existence of the latter, we are not authorized to infer that of the former.

M. de Voltaire has suggested a third solution of this difficulty. (Quest. Encycl. Coquilles.) He cites an instance in Touraine, where, in the space of eighty years, a particular spot of earth had been twice metamorphosed into soft stone, which had become hard when employed in building. In this stone shells of various kinds were produced, discoverable at first only with a microscope, but afterwards growing with the stone. From this fact, I suppose, he would have us infer, that, besides the usual process for generating shells by the elaboration of earth and water in animal vessels, nature may have provided an equivalent operation, by passing the same materials through the pores of calcareous earths and stones; as we see calcareous drop-stones generating every day, by the percolation of water through lime-stone, and new marble forming in the quarries from which the old has been taken out. And it might be asked, whether is it more difficult for nature to shoot the calcareous juice into the form of a shell, than other juices into the forms

of crystals, plants, animals, according to the construction of the vessels through which they pass? There is a wonder somewhere. Is it greatest on this branch of the dilemma; on that which supposes the existence of a power, of which we have no evidence in any other case; or on the first, which requires us to believe the creation of a body of water and its subsequent annihilation? The establishment of the instance, cited by M. de Voltaire, of the growth, of shells unattached to animal bodies, would have been that of his theory. But he has not established it. He has not even left it on ground so respectable as to have rendered it an object of inquiry to the *literati* of his own country. Abandoning this fact, therefore, the three hypotheses are equally unsatisfactory; and we must be contented to acknowledge, that this great phenomenon is as yet unsolved. Ignorance is preferable to error; and he is less remote from the truth who believes nothing, than he who believes what is wrong.

There is great abundance (more especially when you approach the mountains) of stone, white, blue, brown, &c., fit for the chisel, good mill-stone, such also as stands the fire, and slate stone. We are told of flint, fit for gun-flints, on the Meherrin in Brunswick, on the Mississippi between the mouth of the Ohio and Kaskaskia, and on others of the western waters. Isinglass or mica is in several places; loadstone also; and an Asbestos of a ligneous texture, is sometimes to be met with.

Marle abounds generally. A clay, of which, like the Sturbridge in England, bricks are made, which resist long the violent action of fire, has been found on Tuckahoe creek of James' river, and no doubt will be found in other places. Chalk is said to be in Botetourt and Bedford. In the latter county is some earth believed to be gypseous. Ochres are found in various parts.

In the lime-stone country are many caves, the earthy floors of which are impregnated with nitre. On Rich creek, a branch of the Great Kanhaway, about sixty miles below the lead mines, is a very large one, about twenty yards wide, and entering a hill a quarter or half a mile. The vault is of rock, from nine to fifteen or twenty feet above the floor. A Mr. Lynch, who gives me this account, undertook to extract the nitre. Besides a coat of the salt which had formed on the vault and floor, he found the earth highly impregnated to the depth of seven feet in some places, and generally of three, every bushel yielding on an average three pounds of nitre. Mr. Lynch having made about ten hundred pounds of the salt from it, consigned it to some others, who have since made ten thousand pounds. They have done this by pursuing the cave into the hill, never trying a second time the earth they have once exhausted, to see how far or soon it receives another impregnation. At least fifty of these caves are worked on the Greenbriar. There are many of them known on Cumberland river.

The country westward of the Alleghany abounds with springs of common salt. The most remarkable we have heard of are at Bullet's-lick, the Big-bones, the Blue-licks, and on the north fork of Holston. The area of Bullet's-lick is of many acres. Digging the earth to the depth of three feet the water begins to boil up, and the deeper you go and the drier the weather, the stronger is the brine. A thousand gallons of water yield from a bushel to a bushel and a half of salt, which is about eighty pounds of water to one pound of salt. So that sea-water is more than three times as strong as that of these springs. A salt spring has been lately discovered at the Turkey foot on Yohogany, by which river it is overflowed, except at very low water. Its merit is not yet known. Dunning's lick is also as yet untried, but it is supposed to be the best on this side the Ohio. The salt springs on the margin of the Onondago lake are said to give a saline taste to the waters of the lake.

There are several medicinal springs, some of which are indubitably efficacious, while others seem to owe their reputation as much to fancy and change of air and regimen, as to their real virtues. None of them having undergone a chemical analysis in skilful hands, nor been so far the subject of observations as to have produced a reduction into classes of the disorders which they relieve; it is in my power to give little more than an enumeration of them.

The most efficacious of these are two springs in

Augusta near the first sources of James' river, where it is called Jackson's river. They rise near the foot of the ridge of mountains generally called the Warm spring mountains, but in the maps Jackson's mountains. The one distinguished by the name of the Warm spring, and the other of the Hot spring. The Warm spring issues with a very bold stream, sufficient to work a grist mill and to keep the waters of its basin, which is thirty feet in diameter, at the vital warmth, viz. 96° of Fahrenheit's thermometer. The matter with which these waters is allied is very volatile; its smell indicates it to be sulphureous, as also does the circumstance of its turning silver black. They relieve rheumatisms. Other complaints also of very different natures have been removed or lessened by them. It rains here four or five days in every week.

The *Hot spring* is about six miles from the Warm, is much smaller, and has been so hot as to have boiled an egg. Some believe its degree of heat to be lessened. It raises the mercury in Fahrenheit's thermometer to 112 degrees, which is fever heat. It sometimes relieves where the Warm fails. A fountain of common water, issuing within a few inches of its margin, gives it a singular appearance. Comparing the temperature of these with that of the Hot springs of Kamschatka, of which Krachininnikow gives an account, the difference is very great, the latter raising the mercury to 200° which is within 12° of boiling water. These springs are very much

resorted to in spite of a total want of accommodation for the sick. Their waters are strongest in the hottest months, which occasions their being visited in July and August principally.

The Sweet springs are in the county of Botetourt, at the eastern foot of the Alleghany, about forty-two miles from the Warm springs. They are still less known. Having been found to relieve cases in which the others had been ineffectually tried, it is probable their composition is different. They are different also in their temperature, being as cold as common water; which is not mentioned, however, as a proof of a distinct impregnation. This is among the first sources of James' river.

On Potomac river, in Berkley county, above the North mountain, are medicinal springs, much more frequented than those of Augusta. Their powers, however, are less, the waters weakly mineralized, and scarcely warm. They are more visited, because situated in a fertile, plentiful, and populous country, better provided with accommodations, always safe from the Indians, and nearest to the more populous States.

In Louisa county, on the head waters of the South Ann branch of York river, are springs of some medicinal virtue. They are not much used however. There is a weak chalybeate at Richmond; and many others in various parts of the country, which are of too little worth, or too little note, to be enumerated after those before mentioned.

We are told of a sulphur spring on Howard's creek of Greenbriar, and another at Boonsborough on Kentucky.

In the low grounds of the Great Kanhaway, seven miles above the mouth of Elk river, and sixty-seven above that of the Kanhaway itself, is a hole in the earth of the capacity of thirty or forty gallons, from which issues constantly a bituminous vapor, in so strong a current as to give to the sand about its orifice the motion which it has in a boiling spring. On presenting a lighted candle or torch within eighteen inches of the hole it flames up in a column of eighteen inches in diameter, and four or five feet height, which sometimes burns out within twenty minutes, and at other times has been known to continue three days, and then has been still left burning. The flame is unsteady, of the density of that of burning spirits, and smells like burning pit coal. Water sometimes collects in the basin, which is remarkably cold, and is kept in ebullition by the vapor issuing through it. If the vapor be fired in that state, the water soon becomes so warm that the hand cannot bear it, and evaporates wholly in a short time. This, with the circumjacent lands, is the property of His Excellency General Washington and of General Lewis.

There is a similar one on Sandy river, the flame of which is a column of about twelve inches diameter, and three feet high. General Clarke, who informs me of it, kindled the vapor, staid about an hour, and left it burning.

The mention of uncommon springs leads me to that of Syphon fountains. There is one of these near the intersection of the Lord Fairfax's boundary with the North mountain, not far from Brock's gap, on the stream of which is a grist mill, which grinds two bushel of grain at every flood of the spring; another near Cow-pasture river, a mile and a half below its confluence with the Bull-pasture river, and sixteen or seventeen miles from Hot springs, which intermits once in every twelve hours; one also near the mouth of the north Holston.

After these may be mentioned the *Natural Well*, on the lands of a Mr. Lewis in Frederick county. It is somewhat larger than a common well; the water rises in it as near the surface of the earth as in the neighboring artificial wells, and is of a depth as yet unknown. It is said there is a current in it tending sensibly downwards. If this be true, it probably feeds some fountain, of which it is the natural reservoir, distinguished from others, like that of Madison's cave, by being accessible. It is used with a bucket and windlass as an ordinary well.

A complete catalogue of the trees, plants, fruits, &c., is probably not desired. I will sketch out those which would principally attract notice, as being first, Medicinal; second, Esculent; third, Ornamental; or four, useful for fabrication; adding the Linnæan to the popular names, as the latter might not convey precise information to a foreigner. I shall confine myself, too, to native plants.

1. Senna. Cassia ligustrina.
Arsmart. Polygonum Sagittatum.
Clivers, or goose-grass. Galium spurium.
Lobelia of several species.
Palma Christi. Ricinus.
(3,) Jamestown weed. Datura Stramonium.
Mallow. Malva rotundafolia.
Syrian mallow. Hibiscus moschentos.
Hibiscus Virginicus.
Indian mallow. Sida rhombifolia.
Sida abutilon.
Virginia marshmallow. Napæa hermaphrodita.
Napæa dioica.
Indian physic. Spiria trifoliata.
Euphorbia Ipecacuanhæ.
Pleurisy root. Asclepias decumbens.
Virginia snake-root. Aristolochia serpentaria.
Black snake-root. Actæ racemosa.
Seneca rattlesnake-root. Polygala Senega
Valerian. Valeriana locusta radiata.
Gentiana, Saponaria, Villosa & Centaurium.
Ginseng. Panax quinquefolium.
Angelica. Angelica sylvestris.
Cassava. Jatropha urens.
2. Tuckahoe. Lycoperdon tuber.
Jerusalem artichoke. Helianthus tuberosus.
Long potatoes. Convolvulas batatas.
Granadillas. Maycocks, Maracocks, Passiflora incarnata.
Panic. Panicum of many species.
Indian millet. Holcus laxus.
Holcus striosus.
Wild oat. Zizania aquaticia.
Wild pea. Dolichos of Clayton.
Lupine. Lupinus perennis.
Wild hop. Humulus lupulus.
Wild cherry. Prunus Virginiana.
Cherokee plum. Prunus sylvestris fructu majori. Clayton.
Wild plum. Prunus sylvestris fructu minori. Clayton.
Wild crab apple. Pyrus coronaria.
Red mulberry. Morus rubra.
Persimmon. Diospiros Virginiana.
Sugar maple. Acer saccarinum.

Scaly bark hiccory. Juglans alba cortice squamoso. Clayton.
Common hiccory. Juglans alba, fructu minore rancido. Clayton.
Paccan, or Illinois nut. Not described by Linnæus, Millar, or Clayton. Were I to venture to describe this, speaking of the fruit from memory, and of the leaf from plants of two years' growth, I should specify it as Juglans alba, foliolis lanceolatis, acuminatis, serratis, tomentosis, fructu minore, ovato, compresso, vix insculpto, dulci, putamine tenerrimo. It grows on the Illinois, Wabash, Ohio, and Mississippi. It is spoken of by Don Ulloa under the name of Pacanos, in his Noticias Americanas, Entret. 6.
Black walnut. Juglans nigra.
White walnut. Juglans alba.
Chesnut. Fagus castanea.
Chinquapin. Fagus pumila.
Hazlenut. Corylus avellana.
Grapes. Vitis. Various kinds; though only three described by Clayton.
Scarlet strawberries. Fragaria Virginiana of Millar.
Whortleberries. Vaccinium uliginosum.
Wild gooseberries. Ribes grossularia.
Cranberries. Vaccinium oxycoccos.
Black raspberries. Rubus occidentalis.
Blackberries. Rubus fructicosus.
Dewberries. Rubus cæsius.
Cloudberries. Rubus Chamæmorus.
3. Plane tree. Platanus occidentalis.
Poplar. Liriodendron tulipifera.
Populus heterophylla.
Black poplar. Populus nigra.
Aspen. Populus tremula.
Linden, or lime. Telia Americana.
Red-flowering maple. Acer rubrum.
Horse-chesnut, or buck's-eye. Æsculus pavia.
Catalpa. Bignonia catalpa.
Umbrella. Magnolia tripetala.
Swamp laurel. Magnolia glauca.
Cucumber-tree. Magnolia acuminata.
Portugal bay. Laurus indica.
Red bay. Laurus borbonia.
Dwarf-rose bay. Rhododendron maximum.

Laurel of the western country. Qu. species?
Wild pimento. Laurus benzoin.
Sassafras. Laurus sassafras.
Locust. Robinia pseudo-acacia.
Honey-locust. Gleditsia. 1. $\beta$.
Dogwood. Cornus florida.
Fringe, or snow-drop tree. Chionanthus Virginica.
Barberry. Barberis vulgaris.
Redbud, or Judas-tree. Cercis Canadensis.
Holly. Ilex aquifolium.
Cockspur hawthorn. Cratægus coccinea.
Spindle-tree. Euonymus Europæus.
Evergreen spindle-tree. Euonymus Americanus.
Itea Virginica.
Elder. Sambucus nigra.
Papaw. Annona triloba.
Candleberry myrtle. Myrica cerifera.
Dwarf laurel. Kalmia angustifolia, Kalmia latifolia } called ivy with us.
Ivy. Hedera quinquefolia.
Trumpet honeysuckle. Lonicera sempervirens.
Upright honeysuckle. Azalea nudiflora.
Yellow jasmine. Bignonia sempervirens.
Calycanthus floridus.
American aloe. Agave Virginica.
Sumach. Rhus. Qu. species?
Poke. Phytolacca decandra.
Long moss. Tillandsia Usneoides.
4. Reed. Aruudo phragmitis.
Virginia hemp. Acnida cannabina.
Flax. Linum Virginianum.
Black, or pitch-pine. Pinus tæda.
White pine. Pinus strobus.
Yellow pine. Pinus Virginica.
Spruce pine. Pinus foliis singularibus. Clayton.
Hemlock spruce Fir. Pinus Canadensis.
Arbor vitæ. Thuya occidentalis.
Juniper. Juniperus Virginica (called cedar with us).
Cypress. Cupressus disticha.
White cedar. Cupressus Thyoides.
Black oak. Quercus nigra.
White oak. Quercus alba.

Red oak. Quercus rubra.
Willow oak. Quercus phellos.
Chesnut oak. Quercus prinus.
Black jack oak. Quercus aquatica. **Clayton.**
Ground oak. Quercus pumila. Clayton.
Live oak. Quercus Virginiana. **Millar.**
Black birch. Betula nigra.
White birch. Betula alba.
Beach. Fagus sylvatica.
Ash. Fraxinus Americana.
Fraxinus Novæ Angliæ. **Millar.**
Elm. Ulmus Americana.
Willow. Salix. Qu. species?
Sweet gum. Liquidambar styraciflua.

The following were found in Virginia when first visited by the English; but it is not said whether of spontaneous growth, or by cultivation only. Most probably they were natives of more southern climates, and handed along the continent from one nation to another of the savages.

Tobacco. Nicotiana.
Maize. Zea mays.
Round potatoes. Solanum tuberosum.
Pumpkins. Cucurbita pepo.
Cymlings. Cucurbita verrucosa.
Squashes. Cucurbita melopepo.

There is an infinitude of other plants and flowers, for an enumeration and scientific description of which I must refer to the Flora Virginica of our great botanist, Dr. Clayton, published by Gronovius at Leyden, in 1762. This accurate observer was a native and resident of this State, passed a long life in exploring and describing its plants, and is supposed to have enlarged the botanical catalogue as much as almost any man who has lived.

Besides these plants, which are native, our *farms* produce wheat, rye, barley, oats, buck-wheat, broom corn, and Indian corn. The climate suits rice well enough, wherever the lands do. Tobacco, hemp, flax, and cotton, are staple commodities. Indigo yields two cuttings. The silk-worm is a native, and the mulberry, proper for its food, grows kindly.

We cultivate, also, potatoes, both the long and the round, turnips, carrots, parsnips, pumpkins, and ground nuts (Arachis). Our grasses are lucerne, st. foin, burnet, timothy, ray, and orchard grass; red, white, and yellow clover; greensward, blue grass, and crab grass.

The *gardens* yield musk-melons, water-melons, tomatoes, okra, pomegranates, figs, and the esculent plants of Europe.

The *orchards* produce apples, pears, cherries, quinces, peaches, nectarines, apricots, almonds, and plums.

Our quadrupeds have been mostly described by Linnæus and Mons. de Buffon. Of these the mammoth, or big buffalo, as called by the Indians, must certainly have been the largest. Their tradition is, that he was carnivorous, and still exists in the northern parts of America. A delegation of warriors from the Delaware tribe having visited the Governor of Virginia, during the revolution, on matters of business, after these had been discussed and settled in council, the Governor asked them some questions relative to their country, and among others, what

they knew or had heard of the animal whose bones were found at the Saltlicks on the Ohio. Their chief speaker immediately put himself into an attitude of oratory, and with a pomp suited to what he conceived the elevation of his subject, informed him that it was a tradition handed down from their fathers, "That in ancient times a herd of these tremendous animals came to the Big-bone licks, and began an universal destruction of the bear, deer, elks, buffaloes, and other animals which had been created for the use of the Indians; that the Great Man above, looking down and seeing this, was so enraged that he seized his lightning, descended on the earth, seated himself on a neighboring mountain, on a rock of which his seat and the print of his feet are still to be seen, and hurled his bolts among them till the whole were slaughtered, except the big bull, who presenting his forehead to the shafts, shook them off as they fell; but missing one at length, it wounded him in the side; whereon, springing round, he bounded over the Ohio, over the Wabash, the Illinois, and finally over the great lakes, where he is living at this day." It is well known, that on the Ohio, and in many parts of America further north, tusks, grinders, and skeletons of unparalleled magnitude, are found in great numbers, some lying on the surface of the earth, and some a little below it. A Mr. Stanley, taken prisoner near the mouth of the Tennessee, relates, that after being transferred through several tribes, from one to another, he was at length carried over the moun-

tains west of the Missouri to a river which runs westwardly; that these bones abounded there, and that the natives described to him the animal to which they belonged as still existing in the northern parts of their country; from which description he judged it to be an elephant. Bones of the same kind have been lately found, some feet below the surface of the earth, in salines opened on the North Holston, a branch of the Tennessee, about the latitude of 36½° north. From the accounts published in Europe, I suppose it to be decided that these are of the same kind with those found in Siberia. Instances are mentioned of like animal remains found in the more southern climates of both hemispheres; but they are either so loosely mentioned as to leave a doubt of the fact, so inaccurately described as not to authorize the classing them with the great northern bones, or so rare as to found a suspicion that they have been carried thither as curiosities from the northern regions. So that, on the whole, there seem to be no certain vestiges of the existence of this animal farther south than the salines just mentioned. It is remarkable that the tusks and skeletons have been ascribed by the naturalists of Europe to the elephant, while the grinders have been given to the hippopotamus, or river horse. Yet it is acknowledged, that the tusks and skeletons are much larger than those of the elephant, and the grinders many times greater than those of the hippopotamus, and essentially different in form. Wherever these grinders are

found, there also we find the tusks and skeleton; but no skeleton of the hippopotamus nor grinders of the elephant. It will not be said that the hippopotamus and elephant came always to the same spot, the former to deposit his grinders, and the latter his tusks and skeleton. For what became of the parts not deposited there? We must agree then, that these remains belong to each other, that they are of one and the same animal, that this was not a hippopotamus, because the hippopotamus had no tusks, nor such a frame, and because the grinders differ in their size as well as in the number and form of their points. That this was not an elephant, I think ascertained by proofs equally decisive. I will not avail myself of the authority of the celebrated[1] anatomist, who, from an examination of the form and structure of the tusks, has declared they were essentially different from those of the elephant; because another[2] anatomist, equally celebrated, has declared, on a like examination, that they are precisely the same. Between two such authorities I will suppose this circumstance equivocal. But, 1. The skeleton of the mammoth (for so the incognitum has been called) bespeaks an animal of five or six times the cubic volume of the elephant, as Mons. de Buffon has admitted. 2. The grinders are five times as large, are square, and the grinding surface studded with four or five rows of blunt points; whereas those

[1] Hunter.
[2] D'Aubenton.

of the elephant are broad and thin, and their grinding surface flat. 3. I have never heard an instance, and suppose there has been none, of the grinder of an elephant being found in America. 4. From the known temperature and constitution of the elephant, he could never have existed in those regions where the remains of the mammoth have been found. The elephant is a native only of the torrid zone and its vicinities; if, with the assistance of warm apartments and warm clothing, he has been preserved in the temperate climates of Europe, it has only been for a small portion of what would have been his natural period, and no instance of his multiplication in them has ever been known. But no bones of the mammoth, as I have before observed, have been ever found further south than the salines of Holston, and they have been found as far north as the Arctic circle. Those, therefore, who are of opinion that the elephant and mammoth are the same, must believe, 1. That the elephant known to us can exist and multiply in the frozen zone; or, 2. That an eternal fire may once have warmed those regions, and since abandoned them, of which, however, the globe exhibits no unequivocal indications; or, 3. That the obliquity of the ecliptic, when these elephants lived, was so great as to include within the tropics all those regions in which the bones are found; the tropics being, as is before observed, the natural limits of habitation for the elephant. But if it be admitted that this obliquity has really decreased,

and we adopt the highest rate of decrease yet pretended, that is, of one minute in a century, to transfer the northern tropic to the Arctic circle, would carry the existence of these supposed elephants two hundred and fifty thousand years back; a period far beyond our conception of the duration of animal bones less exposed to the open air than these are in many instances. Besides, though these regions would then be supposed within the tropics, yet their winters would have been too severe for the sensibility of the elephant. They would have had, too, but one day and one night in the year, a circumstance to which we have no reason to suppose the nature of the elephant fitted. However, it has been demonstrated, that, if a variation of obliquity in the ecliptic takes place at all, it is vibratory, and never exceeds the limits of nine degrees, which is not sufficient to bring these bones within the tropics. One of these hypotheses, or some other equally voluntary and inadmissible to cautious philosophy, must be adopted to support the opinion that these are the bones of the elephant. For my own part, I find it easier to believe that an animal may have existed, resembling the elephant in his tusks, and general anatomy, while his nature was in other respects extremely different. From the 30th degree of south latitude to the 30th degree of north, are nearly the limits which nature has fixed for the existence and multiplication of the elephant known to us. Proceeding thence northwardly to 36½ degrees, we

enter those assigned to the mammoth. The farther we advance north, the more their vestiges multiply as far as the earth has been explored in that direction; and it is as probable as otherwise, that this progression continues to the pole itself, if land extends so far. The centre of the frozen zone, then, may be the acmé of their vigor, as that of the torrid is of the elephant. Thus nature seems to have drawn a belt of separation between these two tremendous animals, whose breadth, indeed, is not precisely known, though at present we may suppose it about 6½ degrees of latitude; to have assigned to the elephant the region south of these confines, and those north to the mammoth, founding the constitution of the one in her extreme of heat, and that of the other in the extreme of cold. When the Creator has therefore separated their nature as far as the extent of the scale of animal life allowed to this planet would permit, it seems perverse to declare it the same, from a partial resemblance of their tusks and bones. But to whatever animal we ascribe these remains, it is certain such a one has existed in America, and that it has been the largest of all terrestrial beings. It should have sufficed to have rescued the earth it inhabited, and the atmosphere it breathed, from the imputation of impotence in the conception and nourishment of animal life on a large scale; to have stifled, in its birth, the opinion of a writer, the most learned, too, of all others in the science of animal history, that in the new world, "La nature vivante est beaucoup

moins agissante, beaucoup moins forte:"[1] that nature is less active, less energetic on one side of the globe than she is on the other. As if both sides were not warmed by the same genial sun; as if a soil of the same chemical composition was less capable of elaboration into animal nutriment; as if the fruits and grains from that soil and sun yielded a less rich chyle, gave less extension to the solids and fluids of the body, or produced sooner in the cartilages, membranes, and fibres, that rigidity which restrains all further extension, and terminates animal growth. The truth is, that a pigmy and a Patagonian, a mouse and a mammoth, derive their dimensions from the same nutritive juices. The difference of increment depends on circumstances unsearchable to beings with our capacities. Every race of animals seems to have received from their Maker certain laws of extension at the time of their formation. Their elaborate organs were formed to produce this, while proper obstacles were opposed to its further progress. Below these limits they cannot fall, nor rise above them. What intermediate station they shall take may depend on soil, on climate, on food, on a careful choice of breeders. But all the manna of heaven would never raise the mouse to the bulk of the mammoth.

The opinion advanced by the Count de Buffon,[2] is 1. That the animals common both to the old and

[1] Buffon, xviii. 112 edit. Paris, 1764.
[2] Buffon, xviii. 100, 156.

new world are smaller in the latter. 2. That those peculiar to the new are on a smaller scale. 3. That those which have been domesticated in both have degenerated in America; and 4. That on the whole it exhibits fewer species. And the reason he thinks is, that the heats of America are less; that more waters are spread over its surface by nature, and fewer of these drained off by the hand of man. In other words, that *heat* is friendly, and *moisture* adverse to the production and development of large quadrupeds. I will not meet this hypothesis on its first doubtful ground, whether the climate of America be comparatively more humid ? Because we are not furnished with observations sufficient to decide this question. And though, till it be decided, we are as free to deny as others are to affirm the fact, yet for a moment let it be supposed. The hypothesis, after this supposition, proceeds to another; that *moisture* is unfriendly to animal growth. The truth of this is inscrutable to us by reasonings *a priori*. Nature has hidden from us her *modus agendi*. Our only appeal on such questions is to experience; and I think that experience is against the supposition. It is by the assistance of *heat* and *moisture* that vegetables are elaborated from the elements of earth, air, water, and fire. We accordingly see the more humid climates produce the greater quantity of vegetables. Vegetables are mediately or immediately the food of every animal; and in proportion to the quantity of food, we

see animals not only multiplied in their numbers, but improved in their bulk, as far as the laws of their nature will admit. Of this opinion is the Count de Buffon himself in another part of his work;[1] "en general il paroit ques les pays un peu *froids* conviennent mieux à nos boeufs que les pays chauds, et qu'ils sont d'autant plus gross et plus grands que le climat est plus *humide* et plus abondans en paturages. Les boeufs de Danemarck, de la Podolie, de l'Ulkraine et de la Tartarie qu habitent les Calmouques sont les plus grands de tous." Here then a race of animals, and one of the largest too, has been increased in its dimensions by *cold* and *moisture*, in direct opposition to the hypothesis, which supposes that these two circumstances diminish animal bulk, and that it is their contraries *heat* and *dryness* which enlarge it. But when we appeal to experience we are not to rest satisfied with a single fact. Let us, therefore, try our question on more general ground. Let us take two portions of the earth, Europe and America for instance, sufficiently extensive to give operation to general causes; let us consider the circumstances peculiar to each, and observe their effect on animal nature. America, running through the torrid as well as temperate zone, has more *heat* collectively taken, than Europe. But Europe, according to our hypothesis, is the *dryest*. They are equally adapted then to animal productions; each being endowed with one of those causes which befriends animal growth, and with one

[1] viii. 134.

which opposes it. If it be thought unequal to compare Europe with America, which is so much larger, I answer, not more so than to compare America with the whole world. Besides, the purpose of the comparison is to try an hypothesis, which makes the size of animals depend on the *heat* and *moisture* of climate. If, therefore, we take a region so extensive as to comprehend a sensible distinction of climate, and so extensive, too, as that local accidents, or the intercourse of animals on its borders, may not materially affect the size of those in its interior parts, we shall comply with those conditions which the hypothesis may reasonably demand. The objection would be the weaker in the present case, because any intercourse of animals which may take place on the confines of Europe and Asia, is to the advantage of the former, Asia producing certainly larger animals than Europe. Let us then take a comparative view of the quadrupeds of Europe and America, presenting them to the eye in three different tables, in one of which shall be enumerated those found in both countries; in a second, those found in one only; in a third, those which have been domesticated in both. To facilitate the comparison, let those of each table be arranged in gradation according to their sizes, from the greatest to the smallest, so far as their sizes can be conjectured. The weights of the large animals shall be expressed in the English avoirdupois and its decimals; those of the smaller, in the same ounce and its decimals. Those which

are marked thus *, are actual weights of particular subjects, deemed among the largest of their species. Those marked thus †, are furnished by judicious persons, well acquainted with the species, and saying, from conjecture only, what the largest individual they had seen would probably have weighed. The other weights are taken from Messrs. Buffon and D'Aubenton, and are of such subjects as came casually to their hands for dissection. This circumstance must be remembered where their weights and mine stand opposed; the latter being stated not to produce a conclusion in favor of the American species, but to justify a suspension of opinion until we are better informed, and a suspicion, in the meantime, that there is no uniform difference in favor of either; which is all I pretend.

*A comparative view of the Quadrupeds of Europe and of America.*

I. ABORIGINALS OF BOTH.

| | Europe. lb. | America. lb. |
|---|---|---|
| Mammoth | .... | .... |
| Buffalo. Bison | .... | *1800 |
| White Bear. Ours blanc | .... | .... |
| Carribou. Renne | .... | .... |
| Bear. Ours | 153.7 | *410 |
| Elk. Elan. Original palmated | .... | .... |
| Red deer. Cerf | 288.8 | *273 |
| Fallow Deer. Daim | 167.8 | .... |
| Wolf. Loup | 69.8 | .... |
| Roe. Chevreuil | 56.7 | .... |
| Glutton. Glouton. Carcajou | .... | .... |
| Wild cat. Chat sauvage | .... | †30 |
| Lynx. Loup cervier | 25. | .... |

| | Europe. lb. | America. lb. |
|---|---|---|
| Beaver. Castor | 18.5 | *45 |
| Badger. Blaireau | 13.6 | .... |
| Red fox. Renard | 13.5 | .... |
| Gray fox. Isatis | .... | .... |
| Otter. Loutre | 8.9 | †12 |
| Monax. Marmotte | 6.5 | .... |
| Vison. Fouine | 2.8 | .... |
| Hedgehog. Herisson | 2.2 | .... |
| Marten. Marte | 1.9 | †6 |
| | oz. | |
| Water rat. Rat d'eau | 7.5 | .... |
| Weasel. Belette | 2.2 | oz. |
| Flying squirrel. Polatouche | 2.2 | †4 |
| Shrew mouse. Musaraigne | 1. | .... |

## II. ABORIGINALS OF ONE ONLY.

| Europe. | lb. |
|---|---|
| Sanglier. Wild boar | 280. |
| Mouflon. Wild sheep | 56. |
| Bouquetin. Wild goat | .... |
| Lievre. Hare | 7.6 |
| Lapin. Rabbit | 3.4 |
| Putois. Polecat | 3.3 |
| Genette | 3.1 |
| Desman. Muskrat | oz. |
| Ecureuil. Squirrel | 12. |
| Hermine. Ermin | 8.2 |
| Rat. Rat | 7.5 |
| Loirs | 3.1 |
| Lerot. Dormouse | 1.8 |
| Taupe. Mole | 1.2 |
| Hampster | .6 |
| Zisel | .... |
| Leming | |
| Souris. Mouse | .6 |

| America. | lb. |
|---|---|
| Tapir | 534. |
| Elk, round horned | †450. |
| Puma | .... |
| Jaguar | 218. |
| Cabiai | 109. |
| Tamanoir | 109. |
| Tammandua | 65.4 |
| Cougar of North-America. | 75. |
| Cougar of South-America. | 59.4 |
| Ocelot | .... |
| Pecari | 46.3 |
| Jaguaret | 43.6 |
| Alco | .... |
| Lama | .... |
| Paco | .... |
| Paca | 32.7 |
| Serval | .... |
| Sloth. Unau | 27.25 |
| Saricovienne | .... |
| Kincajou | .... |
| Tatou Kabassou | 21.8 |
| Urson. Urchin | .... |

AMERICA.

| | lb. |
|---|---|
| Raccoon. Raton | 16.5 |
| Coati | .... |
| Coendou | 16.3 |
| Sloth. Aï | 13. |
| Sapajou Ouarini | .... |
| Sapajou Coaita | 9.8 |
| Tatou Encubert | .... |
| Tatou Apar | .... |
| Tatou Cachica | 7. |
| Little Coendou | 6.5 |
| Opossum. Sarigu | .... |
| Tapeti | .... |
| Margay | .... |
| Crabier | .... |
| Agouti | 4.2 |
| Sapajou Saï | 3.5 |
| Tatou Cirquinçon | .... |
| Tatou Tatouate | 3.3 |
| Mouffette Squash | .... |
| Mouffette Chinche | .... |
| Mouffette Conepate | .... |
| Scunk | .... |
| Mouffette. Zorilla | .... |
| Whabus. Hare. Rabbit. | .... |
| Aperea | .... |
| Akouchi | .... |
| Ondatra. Muskrat | .... |
| Pilori | .... |
| Great gray squirrel | †2.7 |
| Fox squirrel of Virginia | †2.625 |
| Surikate | 2. |
| Mink | †2. |
| Sapajou. Sajou | 1.8 |
| Indian pig. Cochon d'Inde | 1.6 |
| Sapajou Saïmiri | 1.5 |
| Phalanger | .... |
| Coqualain | .... |
| Lesser gray squirrel | †1.5 |
| Black squirrel | †1.5 |
| Red squirrel | 10.oz. |

| America. | |
|---|---|
| | lb. |
| Sagoin Saki | .... |
| Sagoin Pinche | .... |
| Sagoin Tamarin | oz. |
| Sagoin Ouistiti | 4.4 |
| Sagoin Marakine | .... |
| Sagoin Mico | .... |
| Cayopollin | .... |
| Fourmillier | .... |
| Marmose | .... |
| Sarigue of Cayenne | .... |
| Tucan | .... |
| Red mole | oz. |
| Ground squirrel | 4. |

III. DOMESTICATED IN BOTH.

| | Europe. lb. | America. lb. |
|---|---|---|
| Cow | 765. | *2500 |
| Horse | .... | *1366 |
| Ass | .... | .... |
| Hog | .... | *1200 |
| Sheep | .... | *125 |
| Goat | .... | *80 |
| Dog | 67.6 | .... |
| Cat | 7. | .... |

I have not inserted in the first table the Phoca,[1] nor leather-winged bat, because the one living half the year in the water, and the other being a winged animal, the individuals of each species may visit both continents.

[1] It is said that this animal is seldom seen above thirty miles from shore, or beyond the 56th degree of latitude. The interjacent islands between Asia and America admit his passing from one continent to the other without exceeding these bounds. And in fact, travellers tell us that these islands are places of principal resort for them, and especially in the season of bringing forth their young.

Of the animals in the first table, Monsieur de Buffon himself informs us, [XXVII, 130, XXX. 213,] that the beaver, the otter, and shrew mouse, though of the same species, are larger in America than in Europe. This should therefore have corrected the generality of his expressions, XVIII. 145, and elsewhere, that the animals common to the two countries, are considerably less in America than in Europe, "et cela sans aucune exception." He tells us too, [Quadrup. VIII. 334, edit. Paris, 1777,] that on examining a bear from America, he remarked no difference, "dans *la forme* de cet ours d'Amerique comparé a celui d'Europe," but adds from Bartram's journal, that an American bear weighed four hundred pounds, English, equal to three hundred and sixty-seven pounds French; whereas we find the European bear examined by Mons. D'Aubenton, [XVII. 82,] weighed but one hundred and forty-one pounds French. That the palmated elk is larger in America than in Europe, we are informed by Kalm,[1] a naturalist, who visited the former by public appointment, for the express purpose of examining the subjects of natural history. In this fact Pennant concurs with him. [Barrington's Miscellanies.] The same Kalm tells us[2] that the black moose, or renne of America, is as high as a tall horse; and Catesby,[3] that it is about the bigness of a middle-

[1] I. 233, Lon. 1772.
[2] Ib. 233.
[3] I. xxvii.

sized ox. The same account of their size has been given me by many who have seen them. But Monsieur D'Aubenton says[1] that the renne of Europe is about the size of a red deer. The weasel is larger in America than in Europe, as may be seen by comparing its dimensions as reported by Monsieur D'Aubenton[2] and Kalm. The latter tells us,[3] that the lynx, badger, red fox, and flying squirrel, are the *same* in America as in Europe; by which expression I understand, they are the same in all material circumstances, in size as well as others; for if they were smaller, they would differ from the European. Our gray fox is, by Catesby's account,[4] little different in size and shape from the European fox. I presume he means the red fox of Europe, as does Kalm, where he says,[5] that in size "they do not quite come up to our foxes." For proceeding next to the red fox of America, he says, "they are entirely the same with the European sort;" which shows he had in view one European sort only, which was the red. So that the result of their testimony is, that the American gray fox is somewhat less than the European red; which is equally true of the gray fox of Europe, as may be seen by comparing the measures of the Count de Buffon and Monsieur D'Aubenton.[6] The

[1] XXIV. 162.
[2] XV. 42.
[3] I. 359. I. 48, 221, 251. II. 52.
[4] II. 78.
[5] I. 220.
[6] XXVII. 63. XIV. 119. Harris, II. 387. Buffon, Quad. IX. 1.

white bear of America is as large as that of Europe. The bones of the mammoth which has been found in America, are as large as those found in the old world. It may be asked, why I insert the mammoth, as if it still existed? I ask in return, why I should omit it, as if it did not exist? Such is the economy of nature, that no instance can be produced, of her having permitted any one race of her animals to become extinct; of her having formed any link in her great work so weak as to be broken. To add to this, the traditionary testimony of the Indians, that this animal still exists in the northern and western parts of America, would be adding the light of a taper to that of the meridian sun. Those parts still remain in their aboriginal state, unexplored and undisturbed by us, or by others for us. He may as well exist there now, as he did formerly where we find his bones. If he be a carnivorous animal, as some anatomists have conjectured, and the Indians affirm, his early retirement may be accounted for from the general destruction of the wild game by the Indians, which commences in the first instant of their connection with us, for the purpose of purchasing match-coats, hatchets, and fire-locks, with their skins. There remain then the buffalo, red deer, fallow deer, wolf, roe, glutton, wild cat, monax, bison, hedgehog, marten, and water-rat, of the comparative sizes of which we have not sufficient testimony. It does not appear that Messieurs de Buffon and D'Aubenton have measured, weighed, or seen

those of America. It is said of some of them, by some travellers, that they are smaller than the European. But who were these travellers? Have they not been men of a very different description from those who have laid open to us the other three quarters of the world? Was natural history the object of their travels? Did they measure or weigh the animals they speak of? or did they not judge of them by sight, or perhaps even from report only? Were they acquainted with the animals of their own country, with which they undertake to compare them? Have they not been so ignorant as often to mistake the species? A true answer to these questions would probably lighten their authority, so as to render it insufficient for the foundation of an hypothesis. How unripe we yet are, for an accurate comparison of the animals of the two countries, will appear from the work of Monsieur de Buffon. The ideas we should have formed of the sizes of some animals, from the formation he had received at his first publications concerning them, are very different from what his subsequent communications give us. And indeed his candor in this can never be too much praised. One sentence of his book must do him immortal honor. "J'aime autant une personne qui me releve d'une erreur, qu'une autre qui m'apprend une verité, parce qu'en effet une erreur corrigée est une verité."[1] He seems to have thought the cabiai he first examined wanted little

[1] Quad. IX. 158.

of its full growth. "Il n'etoit pas encore tout-à-fait adulte."[1] Yet he weighed but forty-six and a half pounds, and he found afterwards,[2] that these animals, when full grown, weigh one hundred pounds. He had supposed, from the examination of a jaguar,[3] said to be two years old, which weighed but sixteen pounds twelve ounces, that when he should have acquired his full growth, he would not be larger than a middle-sized dog. But a subsequent account[4] raises his weight to two hundred pounds. Further information will, doubtless, produce further corrections. The wonder is, not that there is yet something in this great work to correct, but that there is so little. The result of this view then is, that of twenty-six quadrupeds common to both countries, seven are said to be larger in America, seven of equal size, and twelve not sufficiently examined. So that the first table impeaches the first member of the assertion, that of the animals common to both countries, the American are smallest, "et cela sans aucune exception." It shows it is not just, in all the latitude in which its author has advanced it, and probably not to such a degree as to found a distinction between the two countries.

Proceeding to the second table, which arranges the animals found in one of the two countries only, Monsieur de Buffon observes, that the tapir, the

[1] XXV. 184.
[2] Quad. IX. 132.
[3] XIX. 2.
[4] Quad. IX. 41.

elephant of America, is but of the size of a small cow. To preserve our comparison, I will add, that the wild boar, the elephant of Europe, is little more than half that size. I have made an elk with round or cylindrical horns an animal of America, and peculiar to it; because I have seen many of them myself, and more of their horns; and because I can say, from the best information, that, in Virginia, this kind of elk has abounded much, and still exists in smaller numbers; and I could never learn that the palmated kind had been seen here at all. I suppose this confined to the more northern latitudes.[1] I have made

[1] The descriptions of Theodat, Denys and La Honton, cited by Monsieur de Buffon, under the article Elan, authorize the supposition, that the flat-horned elk is found in the northern parts of America. It has not however extended to our latitudes. On the other hand, I could never learn that the round-horned elk has been seen further north than the Hudson's river. This agrees with the former elk in its general character, being, like that, when compared with a deer, very much larger, its ears longer, broader, and thicker in proportion, its hair much longer, neck and tail shorter, having a dewlap before the breast (caruncula gutturalis Linnæi) a white spot often, if not always, of a foot diameter, on the hinder part of the buttocks round the tail; its gait a trot, and attended with a rattling of the hoofs; but distinguished from that decisively by its horns, which are not palmated, but round and pointed. This is the animal described by Catesby as the Cervus major Americanus, the stag of America, le Cerf de l'Amérique. But it differs from the Cervus as totally as does the palmated elk from the dama. And in fact it seems to stand in the same relation to the palmated elk, as the red deer does to the fallow. It has abounded in Virginia, has been seen, within my knowledge, on the eastern side of the Blue Ridge since the year 1765, is now common beyond those mountains, has been often brought to us and tamed, and its horns are in the hands of many. I should designate it as the "Alces Americanus cornibus teretibus." It were to be wished, that naturalists, who are acquainted with the renne and elk of Europe, and who

our hare or rabbit peculiar, believing it to be different from both the European animals of those denominations, and calling it therefore by its Algonquin name, Whabus, to keep it distinct from these. Kalm is of the same opinion.[1] I have enumerated the squirrels according to our own knowledge, derived from daily sight of them, because I am not able to reconcile with that the European appellations and descriptions. I have heard of other species, but they have never come within my own notice. These, I think, are the only instances in which I have departed from the authority of Monsieur de Buffon in the construction of this table. I take him for my ground work, because I think him the

may hereafter visit the northern parts of America, would examine well the animals called there by the names of gray and black moose, caribou, original and elk. Monsieur de Buffon has done what could be done from the materials in his hands, toward clearing up the confusion introduced by the loose application of these names among the animals they are meant to designate. He reduces the whole to the renne and flat-horned elk. From all the information I have been able to collect, I strongly suspect they will be found to cover three, if not four distinct species of animals. I have seen skins of a moose, and of the caribou: they differ more from each other, and from that of the round-horned elk, than I ever saw two skins differ which belonged to different individuals of any wild species. These differences are in the color, length, and coarseness of the hair, and in the size, texture, and marks of the skin. Perhaps it will be found that there is, 1, the moose, black and gray, the former being said to be the male, and the latter the female; 2, the caribou or renne; 3, the flat-horned elk, or original; 4, the round-horned elk. Should this last, though possessing so nearly the characters of the elk, be found to be the same with the Cerf d'Ardennes or Brandhitz of Germany, still there will remain the three species first enumerated.

[1] Kalm II. 340, I. 82.

best informed of any naturalist who has ever written. The result is, that there are eighteen quadrupeds peculiar to Europe; more than four times as many, to wit, seventy-four, peculiar to America; that the first[1] of these seventy-four weighs more than the whole column of Europeans; and consequently this second table disproves the second member of the assertion, that the animals peculiar to the new world are on a smaller scale, so far as that assertion relied on European animals for support; and it is in full opposition to the theory which makes the animal volume to depend on the circumstances of *heat* and *moisture*.

The third table comprehends those quadrupeds only which are domestic in both countries. That some of these, in some parts of America, have become less than their original stock, is doubtless true; and the reason is very obvious. In a thinly-peopled country, the spontaneous productions of the forests, and waste fields, are sufficient to support indifferently the domestic animals of the farmer, with a

[1] The Tapir is the largest of the animals peculiar to America. I collect his weight thus: Monsieur de Buffon says, XXIII. 274, that he is of the size of a Zebu, or a small cow. He gives us the measures of a Zebu, ib. 4, as taken by himself, viz. five feet seven inches from the muzzle to the root of the tail, and five feet one inch circumference behind the fore-legs. A bull, measuring in the same way six feet nine inches and five feet two inches, weighed six hundred pounds, VIII. 153. The Zebu then, and of course the Tapir, would weigh about five hundred pounds. But one individual of every species of European peculiars would probably weigh less than four hundred pounds. These are French measures and weights.

very little aid from him, in the severest and scarcest season. He therefore finds it more convenient to receive them from the hand of nature in that indifferent state, than to keep up their size by a care and nourishment which would cost him much labor. If, on this low fare, these animals dwindle, it is no more than they do in those parts of Europe where the poverty of the soil, or the poverty of the owner, reduces them to the same scanty subsistence. It is the uniform effect of one and the same cause, whether acting on this or that side of the globe. It would be erring, therefore, against this rule of philosophy, which teaches us to ascribe like effects to like causes, should we impute this diminution of size in America to any imbecility or want of uniformity in the operations of nature. It may be affirmed with truth, that, in those countries, and with those individuals in America, where necessity or curiosity has produced equal attention, as in Europe, to the nourishment of animals, the horses, cattle, sheep, and hogs, of the one continent are as large as those of the other. There are particular instances, well attested, where individuals of this country have imported good breeders from England, and have improved their size by care in the course of some years. To make a fair comparison between the two countries, it will not answer to bring together animals of what might be deemed the middle or ordinary size of their species; because an error in judging of that middle or ordinary size, would vary the result of

the comparison. Thus Mons. D'Aubenton[1] considers a horse of 4 feet 5 inches high and 400 lb. weight French, equal to 4 feet 8.6 inches and 436 lb. English, as a middle-sized horse. Such a one is deemed a small horse in America. The extremes must therefore be resorted to. The same anatomist[2] dissected a horse of 5 feet 9 inches height, French measure, equal to 6 feet 1.7 English. This is near 6 inches higher than any horse I have seen; and could it be supposed that I had seen the largest horses in America, the conclusion would be, that ours have diminished, or that we have bred from a smaller stock. In Connecticut and Rhode Island, where the climate is favorable to the production of grass, bullocks have been slaughtered which weighed 2,500, 2,200, and 2,100 lbs. nett; and those of 1,800 lbs. have been frequent. I have seen a hog[3] weigh 1,050 lbs. after the blood, bowels, and hair had been taken from him. Before he was killed, an attempt was made to weigh him with a pair of steel yards, graduated to 1,200 lbs., but he weighed more. Yet this hog was probably not within fifty generations of the European stock. I am well informed of another which weighed 1,100 lbs. gross. Asses have been still more neglected than any other domestic animal in America. They are neither fed nor housed in the most rigorous season of the year. Yet

[1] VII. 432.
[2] VII. 474.
[3] In Williamsburg, April, 1769.

they are larger than those measured by Mons. D'Aubenton,[1] of 3 feet 7¼ inches, 3 feet 4 inches, and 3 feet 2½ inches, the latter weighing only 215.8 lbs. These sizes, I suppose, have been produced by the same negligence in Europe, which has produced a like diminution here. Where care has been taken of them on that side of the water, they have been raised to a size bordering on that of the horse; not by the *heat* and *dryness* of the climate, but by good food and shelter. Goats have been also much neglected in America. Yet they are very prolific here, bearing twice or three times a year, and from one to five kids at a birth. Mons. de Buffon has been sensible of a difference in this circumstance in favor of America.[2] But what are their greatest weights, I cannot say. A large sheep here weighs 100 lbs. I observe Mons. D'Aubenton calls a ram of 62 lbs. one of the middle size.[3] But to say what are the extremes of growth in these and the other domestic animals of America, would require information of which no one individual is possessed. The weights actually known and stated in the third table preceding will suffice to show, that we may conclude on probable grounds, that, with equal food and care, the climate of America will preserve the races of domestic animals as large as the European stock from which they are derived; and, consequently, that the third

[1] VIII. 48, 55, 66.
[2] XVIII. 96.
[3] IX. 41.

member of Mons. de Buffon's assertion that the domestic animals are subject to degeneration from the climate of America, is as probably wrong as the first and second were certainly so.

That the last part of it is erroneous, which affirms that the species of American quadrupeds are comparatively few, is evident from the tables taken together. By these it appears that there are an hundred species aboriginal in America. Mons. de Buffon supposes about double that number existing on the whole earth.[1] Of these Europe, Asia, and Africa, furnish suppose one hundred and twenty-six; that is, the twenty-six common to Europe and America, and about one hundred which are not in America at all. The American species, then, are to those of the rest of the earth, as one hundred to one hundred and twenty-six, or four to five. But the residue of the earth being double the extent of America, the exact proportion would have been but as four to eight.

Hitherto I have considered this hypothesis as applied to brute animals only, and not in its extension to the man of America, whether aboriginal or transplanted. It is the opinion of Mons. de Buffon that the former furnishes no exception to it.[2]

"Quoique le sauvage du nouveau monde soit à peu près de même stature que l'homme de notre monde, cela ne suffit pas pour qu'il puisse faire une exception au fait général du rapetissement de la nature vivante dans tout ce continent; le sauvage est foible et petit par les organes de

[1] XXX. 219.
[2] XVIII. 146.

la génération; il n'a ni poil, ni barbe, and nulle ardeur pour sa femelle. Quoique plus léger que l'Européen, parce qu'il a plus d'habitude à courir, il est cependant beaucoup moins fort de corps; il est aussi bien moins sensible, et cependant plus craintif et plus lâche; il n'a nulle vivacité, nulle activité dans l'ame; celle du corps est moins un exercise, un mouvement volontaire qu'une nécessité d'action causée par le besoin; ôtez lui la faim et la soif, vous détruirez en même tems le principe actif de tous ses mouvemens; il demeurera stupidement en repos sur ses jambes ou couché pendant des jours entiers. Il ne faut pas aller chercher plus loin à cause de la vie dispersée des sauvages et de leur éloignement pour la société; la plus précieuse étincelle du feu de la nature leur a été refusée; ils manquent d'ardeur pour leur femelle, et par consequent d'amour pour leur semblables; ne connoissant pas l'attachment le plus vif, le plus tendre de tous, leurs autres sentimens de ce genre, sont froids et languissans; ils aiment foiblement leurs pères et leurs enfans; la société la plus intime de toutes, celle de la même famille, n'a donc chez eux que de foibles liens; la société d'une famille à l'autre n'en a point de tout; dès lors nulle réunion, nulle république, nulle état social. La physique de l'amour fait chez eux le moral des mœurs; leur cœur est glacé, leur société et leur empire dur. Ils ne regardent leurs femmes que comme des servantes de peine ou des bêtes de somme qu'ils chargent, sans ménagement, du fardeau de leur chasse, et qu'ils forcent, sans pitié, sans reconnoissance, à des ouvrages qui souvent sont au dessus de leurs forces; ils n'ont que peu d'enfans; ils en ont peu de soin; tout se ressent de leur premier defaut; ils sont indifférents parce qu'ils sont peu puissants, et cette indifference pour le sexe est la tache originelle qui flétrit la nature, qui l'empeche de s'épanouir, et qui detruisant les germes de la vie, coupe en même temps la racine de société. L'homme ne fait donc point d'exception ici. La nature en lui refusant les puissances de l'amour l'a plus maltraité et plus rapetissé qu'aucun des animaux."

An afflicting picture, indeed, which for the honor of human nature, I am glad to believe has no original. Of the Indian of South America I know nothing; for I would not honor with the appellation of knowledge, what I derive from the fables published of them. These I believe to be just as true as the fables of Æsop. This belief is founded on what I have seen

of man, white, red, and black, and what has been written of him by authors, enlightened themselves, and writing among an enlightened people. The Indian of North America being more within our reach, I can speak of him somewhat from my own knowledge, but more from the information of others better acquainted with him, and on whose truth and judgment I can rely. From these sources I am able to say, in contradiction to this representation, that he is neither more defective in ardor, nor more impotent with his female, than the white reduced to the same diet and exercise; that he is brave, when an enterprise depends on bravery; education with him making the point of honor consist in the destruction of an enemy by stratagem, and in the preservation of his own person free from injury; or, perhaps, this is nature, while it is education which teaches us to[1] honor force more than finesse; that he will defend himself against a host of enemies, always choosing to be killed, rather than to surrender,[2] though it be to the whites, who he knows will

[1] Sol Rodomonte sprezza di venire
Se non, dove la via meno è ficura.—ARIOSTO, 14, 117.

[2] In so judicious an author as Don Ulloa, and one to whom we are indebted for the most precise information we have of South America, I did not expect to find such assertions as the following: "Los Indios vencidos son los mas cobardes y pusilanimes que se peuden vér: Se hacen nöcentes, le humillan hasta el desprecio, disculpan su inconsiderado arrojo, y con las suplicas y los ruegos dan seguras pruebas de su pusilanimidad, ó lo que resieren las historias de la Conquista, sobre sus grandes acciones, es en un sendito figurado, ó el caracter de estas gentes no es ahora segun era entonces; pero lo que no tiene duda es, que las Naciones de la parte Septentrional subsisten en la misma

treat him well; that in other situations, also, he meets death with more deliberation, and endures tortures with a firmness unknown almost to religious enthusiasm with us; that he is affectionate to his children, careful of them, and indulgent in the extreme; that his affections comprehend his other connections, weakening, as with us, from circle to circle, as they recede from the centre; that his friendships are strong and faithful to the uttermost[1] extremity;

libertad que siempre han tenido, sin haber sido sojuzgados por algon Principe extrano, y que viven segun su régimen y costumbres de toda la vida, sin que haya habido motivo para que muden de caracter; y en estos se vé lo mismo, que sucede en los Peru, y de toda la América meridional, reducidos, y que nunca lo han estado." Noticias Americanas, Entretenimiento xviii. § I. Don Ulloa here admits, that the authors who have described the Indians of South America, before they were enslaved, had represented them as a brave people, and therefore seems to have suspected that the cowardice which he had observed in those of the present race might be the effect of subjugation. But, supposing the Indians of North America to be cowards also, he concludes the ancestors of those of South America to have been so too, and, therefore, that those authors have given fictions for truth. He was probably not acquainted himself with the Indians of North America, and had formed his opinion from hearsay. Great numbers of French, of English, and of Americans, are perfectly acquainted with these people. Had he had an opportunity of inquiring of any of these, they would have told him, that there never was an instance known of an Indian begging his life when in the power of his enemies; on the contrary, that he courts death by every possible insult and provocation. His reasoning, then, would have been reversed thus: "Since the present Indian of North America is brave, and authors tell us that the ancestors of those of South America were brave also, it must follow that the cowardice of their descendants is the effect of subjugation and ill treatment." For he observes, ib. § 27, that "los obrages los aniquillan por la inhumanidad con que se les trata."

[1] A remarkable instance of this appeared in the case of the late Colonel Byrd, who was sent to the Cherokee nation to transact some

that his sensibility is keen, even the warriors weeping most bitterly on the loss of their children, though in general they endeavor to appear superior to human events; that his vivacity and activity of mind is equal to ours in the same situation; hence his eagerness for hunting, and for games of chance. The women are submitted to unjust drudgery. This I believe is the case with every barbarous people. With such, force is law. The stronger sex imposes on the weaker. It is civilization alone which replaces women in the enjoyment of their natural equality. That first teaches us to subdue the selfish passions, and to respect those rights in others which we value in ourselves. Were we in equal barbarism, our females would be equal drudges. The man with them is less strong than with us, but their women stronger than ours; and both for the same obvious reason; because our man and their woman is habituated to labor, and formed by it. With both races

business with them. It happened that some of our disorderly people had just killed one or two of that nation. It was therefore proposed in the council of the Cherokees that Colonel Byrd should be put to death, in revenge for the loss of their countrymen. Among them was a chief named Silòuee, who, on some former occasion, had contracted an acquaintance and friendship with Colonel Byrd. He came to him every night in his tent, and told him not to be afraid, they should not kill him. After many days' deliberation, however, the determination was, contrary to Silòuee's expectation, that Byrd should be put to death, and some warriors were despatched as executioners. Silòuee attended them, and when they entered the tent, he threw himself between them and Byrd, and said to the warriors, "This man is my friend; before you get at him, you must kill me." On which they returned, and the council respected the principle so much as to recede from their determination.

the sex which is indulged with ease is the least athletic. An Indian man is small in the hand and wrist, for the same reason for which a sailor is large and strong in the arms and shoulders, and a porter in the legs and thighs. They raise fewer children than we do. The causes of this are to be found, not in a difference of nature, but of circumstance. The women very frequently attending the men in their parties of war and of hunting, child-bearing becomes extremely inconvenient to them. It is said, therefore, that they have learned the practice of procuring abortion by the use of some vegetable; and that it even extends to prevent conception for a considerable time after. During these parties they are exposed to numerous hazards, to excessive exertions, to the greatest extremities of hunger. Even at their homes the nation depends for food, through a certain part of every year, on the gleanings of the forest; that is, they experience a famine once in every year. With all animals, if the female be badly fed, or not fed at all, her young perish; and if both male and female be reduced to like want, generation becomes less active, less productive. To the obstacles, then, of want and hazard, which nature has opposed to the multiplication of wild animals, for the purpose of restraining their numbers within certain bounds, those of labor and of voluntary abortion are added with the Indian. No wonder, then, if they multiply less than we do. Where food is regularly supplied, a single farm will show more

of cattle, than a whole country of forests can of buffaloes. The same Indian women, when married to white traders, who feed them and their children plentifully and regularly, who exempt them from excessive drudgery, who keep them stationary and unexposed to accident, produce and raise as many children as the white women. Instances are known, under these circumstances, of their rearing a dozen children. An inhuman practice once prevailed in this country, of making slaves of the Indians. It is a fact well known with us, that the Indian women so enslaved produced and raised as numerous families as either the whites or blacks among whom they lived. It has been said that Indians have less hair than the whites, except on the head. But this is a fact of which fair proof can scarcely be had. With them it is disgraceful to be hairy on the body. They say it likens them to hogs. They therefore pluck the hair as fast as it appears. But the traders who marry their women, and prevail on them to discontinue this practice, say, that nature is the same with them as with the whites. Nor, if the fact be true, is the consequence necessary which has been drawn from it. Negroes have notoriously less hair than the whites; yet they are more ardent. But if cold and moisture be the agents of nature for diminishing the races of animals, how comes she all at once to suspend their operation as to the physical man of the new world, whom the Count acknowledges to be "à peu prês de même stature que l'homme de notre

monde," and to let loose their influence on his moral faculties? How has this "combination of the elements and other physical causes, so contrary to the enlargement of animal nature in this new world, these obstacles to the development and formation of great germs,"[1] been arrested and suspended, so as to permit the human body to acquire its just dimensions, and by what inconceivable process has their action been directed on his mind alone? To judge of the truth of this, to form a just estimate of their genius and mental powers, more facts are wanting, and great allowance to be made for those circumstances of their situation which call for a display of particular talents only. This done, we shall probably find that they are formed in mind as well as in body, on the same module with the[2] "Homo sapiens Europæus." The principles of their society forbidding all compulsion, they are to be led to duty and to enterprise by personal influence and persuasion. Hence eloquence in council, bravery and address in war, become the foundations of all consequence with them. To these acquirements all their faculties are directed. Of their bravery and address in war we have multiplied proofs, because we have been the subjects on which they were exercised. Of their eminence in oratory we have fewer examples, because it is displayed chiefly in their own councils. Some, however, we have, of very superior lustre. I

[1] XVIII. 146.
[2] Linn. Syst. Definition of a Man.

may challenge the whole orations of Demosthenes and Cicero, and of any more eminent orator, if Europe has furnished more eminent, to produce a single passage, superior to the speech of Logan, a Mingo chief, to Lord Dunmore, then governor of this State. And as a testimony of their talents in this line, I beg leave to introduce it, first stating the incidents necessary for understanding it.

In the spring of the year 1774, a robbery was committed by some Indians on certain land-adventurers on the river Ohio. The whites in that quarter, according to their custom, undertook to punish this outrage in a summary way. Captain Michael Cresap, and a certain Daniel Greathouse, leading on these parties, surprised, at different times, travelling and hunting parties of the Indians, having their women and children with them, and murdered many. Among these were unfortunately the family of Logan, a chief celebrated in peace and war, and long distinguished as the friend of the whites. This unworthy return provoked his vengeance. He accordingly signalized himself in the war which ensued. In the autumn of the same year a decisive battle was fought at the mouth of the Great Kanhaway, between the collected forces of the Shawanese, Mingoes and Delawares, and a detachment of the Virginia militia. The Indians were defeated and sued for peace. Logan, however, disdained to be seen among the suppliants. But lest the sincerity of a treaty should be disturbed, from which so distinguished a chief

absented himself, he sent, by a messenger, the following speech, to be delivered to Lord Dunmore:

"I appeal to any white man to say, if ever he entered Logan's cabin hungry, and he gave him not meat; if ever he came cold and naked, and he clothed him not. During the course of the last long and bloody war Logan remained idle in his cabin, an advocate for peace. Such was my love for the whites, that my countrymen pointed as they passed, and said, 'Logan is the friend of white men.' I had even thought to have lived with you, but for the injuries of one man. Colonel Cresap, the last spring, in cold blood, and unprovoked, murdered all the relations of Logan, not even sparing my women and children. There runs not a drop of my blood in the veins of any living creature. This called on me for revenge. I have sought it: I have killed many: I have fully glutted my vengeance: for my country I rejoice at the beams of peace. But do not harbor a thought that mine is the joy of fear. Logan never felt fear. He will not turn on his heel to save his life. Who is there to mourn for Logan?—Not one."[1]

[1] PHILADELPHIA, December 31, 1797.

DEAR SIR,—Mr. Tazewell has communicated to me the inquiries you have been so kind as to make, relative to a passage in the "Notes on Virginia," which has lately excited some newspaper publications. I feel, with great sensibility, the interest you take in this business, and with pleasure, go into explanations with one whose objects I know to be truth and justice alone. Had Mr. Martin thought proper to suggest to me, that doubts might be entertained of the transaction respecting Logan, as stated in the "Notes on Virginia," and to inquire on what grounds that statement was founded, I should have felt

Before we condemn the Indians of this continent as wanting genius, we must consider that letters

myself obliged by the inquiry; have informed him candidly of the grounds, and cordially have co-operated in every means of investigating the fact, and correcting whatsoever in it should be found to have been erroneous. But he chose to step at once into the newspapers, and in his publications there and the letters he wrote to me, adopted a style which forbade the respect of an answer. Sensible, however, that no act of his could absolve me from the justice due to others, as soon as I found that the story of Logan could be doubted, I determined to inquire into it as accurately as the testimony remaining, after a lapse of twenty odd years, would permit, and that the result should be made known, either in the first new edition which should be printed of the "Notes on Virginia," or by publishing an appendix. I thought that so far as that work had contributed to impeach the memory of Cresap, by handing on an erroneous charge it was proper it should be made the vehicle of retribution. Not that I was at all the author of the injury; I had only concurred, with thousands and thousands of others, in believing a transaction on authority which merited respect. For the story of Logan is only repeated in in the "Notes on Virginia," precisely as it had been current for more than a dozen years before they were published. When Lord Dunmore returned from the expedition against the Indians, in 1774, he and his officers brought the speech of Logan, and related the circumstances of it. These were so affecting, and the speech itself so fine a morsel of eloquence, that it became the theme of every conversation, in Williamsburg particularly, and generally, indeed, wheresoever any of the officers resided or resorted. I learned it in Williamsburg, I believe at Lord Dunmore's; and I find in my pocket-book of that year (1774) an entry of the narrative, as taken from the mouth of some person, whose name, however, is not noted, nor recollected, precisely in the words stated in the "Notes on Virginia." The speech was published in the Virginia Gazette of that time, (I have it myself in the volume of gazettes of that year,) and though it was the translation made by the common interpreter, and in a style by no means elegant, yet it was so admired, that it flew through all the public papers of the continent, and through the magazines and other periodical publications of Great Britain; and those who were boys at that day will now attest, that the speech of Logan used to be given them as a school exercise for repetition. It was not till about thirteen or fourteen

have not yet been introduced among them. Were we to compare them in their present state with the

years after the newspaper publications, that the "Notes on Virginia" were published in America. Combating, in these, the contumelious theory of certain European writers, whose celebrity gave currency and weight to their opinions, that our country from the combined effects of soil and climate, degenerated animal nature, in the general, and particularly the moral faculties of man, I considered the speech of Logan as an apt proof of the contrary, and used it as such; and I copied, verbatim, the narrative I had taken down in 1774, and the speech as it had been given us in a better translation by Lord Dunmore. I knew nothing of the Cresaps, and could not possibly have a motive to do them an injury with design. I repeated what thousands had done before, on as good authority as we have for most of the facts we learn through life, and such as, to this moment, I have seen no reason to doubt. That any body questioned it, was never suspected by me, till I saw the letter of Mr. Martin in the Baltimore paper. I endeavored then to recollect who among my contemporaries, of the same circle of society, and consequently of the same recollections, might still be alive; three and twenty years of death and dispersion had left very few. I remembered, however, that General Gibson was still living, and knew that he had been the translator of the speech. I wrote to him immediately. He, in answer, declares to me, that he was the very person sent by Lord Dunmore to the Indian town; that, after he had delivered his message there, Logan took him out to a neighboring wood; sat down with him, and rehearsing, with tears, the catastrophe of his family, gave him that speech for Lord Dunmore; that he carried it to Lord Dunmore; translated it for him; has turned to it in the Encyclopedia, as taken from the "Notes on Virginia," and finds that it was his translation I had used, with only two or three verbal variations of no importance. These, I suppose, had arisen in the course of successive copies. I cite General Gibson's letter by memory, not having it with me; but I am sure I cite it substantially right. It establishes unquestionably, that the speech of Logan is genuine; and that being established, it is Logan himself who is author of all the important facts. "Colonel Cresap," says he, "in cold blood and unprovoked, murdered all the relations of Logan, not sparing even my women and children; there runs not a drop of my blood in the veins of any living creature." The person and the fact, in all its material circumstances, are here given by Logan himself. General Gibson,

Europeans, north of the Alps, when the Roman arms and arts first crossed those mountains, the comparison would be unequal, because, at that time, those parts of Europe were swarming with numbers;

indeed, says, that the title was mistaken; that Cresap was a Captain, and not a Colonel. This was Logan's mistake. He also observes, that it was on another water of the Ohio, and not on the Kanhaway, that his family was killed. This is an error which has crept into the traditionary account; but surely of little moment in the moral view of the subject. The material question is, was Logan's family murdered, and by whom? That it was murdered has not, I believe, been denied; that it was by one of the Cresaps, Logan affirms. This is a question which concerns the memories of Logan and Cresap; to the issue of which I am as indifferent as if I had never heard the name of either. I have begun and shall continue to inquire into the evidence additional to Logan's, on which the fact was founded. Little, indeed, can now be heard of, and that little dispersed and distant. If it shall appear on inquiry, that Logan has been wrong in charging Cresap with the murder of his family, I will do justice to the memory of Cresap, as far as I have contributed to the injury, by believing and repeating what others had believed and repeated before me. If, on the other hand, I find that Logan was right in his charge, I will vindicate, as far as my suffrage may go, the truth of a Chief, whose talents and misfortunes have attached to him the respect and commiseration of the world.

I have gone, my dear Sir, into this lengthy detail to satisfy a mind, in the candor and rectitude of which I have the highest confidence. So far as you may incline to use the communication for rectifying the judgments of those who are willing to see things truly as they are, you are free to use it. But I pray that no confidence which you may repose in any one, may induce you to let it go out of your hands, so as to get into a newspaper: against a contest in that field I am entirely decided. I feel extraordinary gratification, indeed, in addressing this letter to you, with whom shades of difference in political sentiment have not prevented the interchange of good opinion, nor cut off the friendly offices of society and good correspondence. This political tolerance is the more valued by me, who consider social harmony as the first of human felicities, and the happiest moments, those which are given to the effusions of the heart. Accept them sincerely, I pray you, from one who has the honor to be, with sentiments of high respect and attachment, dear Sir, your most obedient, and most humble servant.

because numbers produce emulation, and multiply the chances of improvement, and one improvement begets another. Yet I may safely ask, how many good poets, how many able mathematicians, how many great inventors in arts or sciences, had Europe, north of the Alps, then produced? And it was sixteen centuries after this before a Newton could be formed. I do not mean to deny that there are varieties in the race of man, distinguished by their powers both of body and mind. I believe there are, as I see to be the case in the races of other animals. I only mean to suggest a doubt, whether the bulk and faculties of animals depend on the side of the Atlantic on which their food happens to grow, or which furnishes the elements of which they are compounded? Whether nature has enlisted herself as a Cis or Trans-Atlantic partisan? I am induced to suspect there has been more eloquence than sound reasoning displayed in support of this theory; that it is one of those cases where the judgment has been seduced by a glowing pen; and whilst I render every tribute of honor and esteem to the celebrated zoologist, who has added, and is still adding, so many precious things to the treasures of science, I must doubt whether in this instance he has not cherished error also, by lending her for a moment his vivid imagination and bewitching language. (4)

So far the Count de Buffon has carried this new theory of the tendency of nature to belittle her productions on this side the Atlantic. Its application

to the race of whites transplanted from Europe, remained for the Abbé Raynal. "On doit etre etonné (he says) que l'Amérique n'ait pas encore produit un bon poëte, un habile mathématicien, un homme de génie dans un seul art, ou seule science." Hist. Philos. p. 92, ed. Maestricht, 1774. "America has not yet produced one good poet." When we shall have existed as a people as long as the Greeks did before they produced a Homer, the Romans a Virgil, the French a Racine and Voltaire, the English a Shakespeare and Milton, should this reproach be still true, we will inquire from what unfriendly causes it has proceeded, that the other countries of Europe and quarters of the earth shall not have inscribed any name in the roll of poets.[1] But neither has America produced "one able mathematician, one man of genius in a single art or a single science." In war we have produced a Washington, whose memory will be adored while liberty shall have votaries, whose name shall triumph over time, and will in future ages assume its just station among the most celebrated worthies of the world, when that wretched philosophy shall be forgotten which would have arranged him among the degeneracies of nature. In physics we have produced a Franklin, than whom

[1] Has the world as yet produced more than two poets, acknowledged to be such by all nations? An Englishman only reads Milton with delight, an Italian, Tasso, a Frenchman the Henriade; a Portuguese, Camoens; but Homer and Virgil have been the rapture of every age and nation; they are read with enthusiasm in their originals by those who can read the originals, and in translations by those who cannot.

no one of the present age has made more important discoveries, nor has enriched philosophy with more, or more ingenious solutions of the phenomena of nature. We have supposed Mr. Rittenhouse second to no astronomer living; that in genius he must be the first, because he is self taught. As an artist he has exhibited as great a proof of mechanical genius as the world has ever produced. He has not indeed made a world; but he has by imitation approached nearer its Maker than any man who has lived from the creation to this day.[1] As in philosophy and war, so in government, in oratory, in painting, in the plastic art, we might show that America, though but a child of yesterday, has already given hopeful proofs of genius, as well as of the nobler kinds, which arouse the best feelings of man, which call him into action, which substantiate his freedom, and conduct him to happiness, as of the subordinate, which serve to amuse him only. We therefore suppose, that this reproach is as unjust as it is unkind: and that, of the geniuses which adorn the present age, America contributes its full share. For comparing it with those countries where genius is most cultivated, where are the most excellent models for art, and scaffoldings for the attainment of science, as France and England for instance, we calculate thus:

[1] There are various ways of keeping truth out of sight. Mr. Rittenhouse's model of the planetary system has the plagiary application of an Orrery; and the quadrant invented by Godfrey, an American also, and with the aid of which the European nations traverse the globe, is called Hadley's quadrant.

The United States contains three millions of inhabitants; France twenty millions; and the British islands ten. We produce a Washington, a Franklin, a Rittenhouse. France then should have half a dozen in each of these lines, and Great Britain half that number, equally eminent. It may be true that France has; we are but just becoming acquainted with her, and our acquaintance so far gives us high ideas of the genius of her inhabitants. It would be injuring too many of them to name particularly a Voltaire, a Buffon, the constellation of Encyclopedists, the Abbé Raynal himself, etc., etc. We, therefore, have reason to believe she can produce her full quota of genius. The present war having so long cut off all communication with Great Britain, we are not able to make a fair estimate of the state of science in that country. The spirit in which she wages war, is the only sample before our eyes, and that does not seem the legitimate offspring either of science or of civilization. The sun of her glory is fast descending to the horizon. Her philosophy has crossed the channel, her freedom the Atlantic, and herself seems passing to that awful dissolution whose issue is not given human foresight to scan.[1]

[1] In a later edition of the Abbé Raynal's work, he has withdrawn his censure from that part of the new world inhabited by the Federo-Americans; but has left it still on the other parts. North America has always been more accessible to strangers than South. If he was mistaken then as to the former, he may be so as to the latter. The glimmerings which reach us from South America enable us to see that its

Having given a sketch of our minerals, vegetables, and quadrupeds, and being led by a proud theory to make a comparison of the latter with those of Europe, and to extend it to the man of America, both aboriginal and emigrant, I will proceed to the remaining articles comprehended under the present query.

Between ninety and a hundred of our birds have been described by Catesby. His drawings are better as to form and attitude than coloring, which is generally too high. They are, the following (see pages 98, 99 and 100):

Besides these, we have,

The Royston crow. Corvus cornix.
Crane. Ardea Canadensis.
House swallow. Hirundo rustica.
The Ground swallow. Hirundo riparia.
Greatest gray eagle.
Smaller turkey buzzard, with a feathered head.

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inhabitants are held under the accumulated pressure of slavery, superstition and ignorance. Whenever they shall be able to rise under this weight, and to show themselves to the rest of the world, they will probably show they are like the rest of the world. We have not yet sufficient evidence that there are more lakes and fogs in South America than in other parts of the earth. As little do we know what would be their operation on the mind of man. That country has been visited by Spaniards and Portuguese chiefly, and almost exclusively. These, going from a country of the old world remarkably dry in its soil and climate, fancied there were more lakes and fogs in South America than in Europe. An inhabitant of Ireland, Sweden, or Finland would have formed the contrary opinion. Had South America then been discovered and settled by a people from a fenny country, it would probably have been represented as much drier than the old world. A patient pursuit of facts, and cautious combination and comparison of them, is the drudgery to which man is subjected by his Maker, if he wishes to attain sure knowledge.

## BIRDS OF VIRGINIA.

| Linnæan Designation. | Catesby's Designation. | | Popular Names. | Buffon oiseaux. |
|---|---|---|---|---|
| Lanius tyrannus | Muscicapa coronâ rubrâ | 1.55 | Tyrant. Field martin | 8.398 |
| Vultur aura | Buteo specie Gallo-pavonis | 1. 6 | Turkey buzzard | 1.246 |
| Falco leucocephalus | Aquila capite albo | 1. 1 | Bald eagle | 1.138 |
| Falco sparverius | Accipiter minor | 1. 5 | Little hawk. Sparrow hawk | ..... |
| Falco columbarius | Accipiter palumbarius | 1. 3 | Pigeon hawk | 1.338 |
| Falco furcatus | Accipiter caudâ furcatâ | 1. 4 | Forked tail hawk | 1.286.312 |
| | Accipiter piscatorius | 1. 2 | Fishing hawk | 1.109 |
| Strix asio | Noctua aurita minor | 1. 7 | Little owl | 1.141 |
| Psittacus Caroliniensis | Psittacus Caroliniensus | 1.11 | Parrot of Carolina. Parroquet | 11.383 |
| Corvus cristatus | Pica glandaria, eærulea, cristata | 1.15 | Blue jay | 5.164 |
| Oriolus Baltimore | Icterus ex aureo nigroque varius | 1.48 | Baltimore bird | 5.318 |
| Oriolus spurius | Icterus minor | 1.49 | Bastard Baltimore | 5.321 |
| Gracula quiscula | Monedula purpurea | 1.12 | Purple jackdaw. Crow blackbird | 5.134 |
| Cuculus Americanus | Cuculus Caroliniensis | 1. 9 | Carolina cuckow | 12.62 |
| Picus principalis | Picus maximus rostro albo | 1.16 | White bill woodpecker | 13.69 |
| Picus pileatus | Picus niger maximus, capite rubro | 1.17 | Larger red-crested woodpecker | 13.72 |
| Picus erythrocephalus | Picus capite toto rubro | 1.20 | Red-headed woodpecker | 13.83 |
| Picus ouratus | Picus major alis aureis | 1 18 | Gold-winged woodpecker. Yucker | 13.59 |
| Picus Carolinus | Picus ventre rubro | 1.19 | Red-bellied woodpecker | 13.105 |
| Picus pubescens | Picus varius minimus | 1.21 | Smallest spotted woodpecker | 13.113 |
| Picus villosus | Picus medius quasi-villosus | 1.19 | Hairy woodpecker. Spec. woodpecker | 13.111 |
| Picus varius | Picus varius minor ventre luteo | 1.21 | Yellow-bellied woodpecker | 13.115 |
| Sitta Europæa | Sitta capite nigro | 1.22 | Nuthatch | 10.213 |
| | Sitta capite fusco | 1.22 | Small Nuthatch | 10.214 |
| Alcedo alcyon | Ispida | 1.69 | Kingfisher | 13.310 |
| Certhia pinus | Parus Americanus lutescens | 1.61 | Pine-Creeper | 9.433 |
| Trochilus colubris | Mellivora avis Caroliniensis | 1.65 | Humming bird | 11.16 |
| Anas Canadensis | Anser Canadensis | 1.92 | Wild goose | 17.122 |
| Anas bucephala | Anas minor purpureo capite | 1.95 | Buffel's-head duck | 17.356 |
| Anas rustica | Anas minor ex albo and fusco vario | 1.98 | Little brown duck | 17.413 |
| Anas discors. *b* | Querquedula Americana variegata | 1.10 | White face teal | 17.403 |
| Anas discors. *b* | Querquedula Americana fusca | 1.99 | Blue wing teal | 17.405 |

| | | | | |
|---|---|---|---|---|
| Anas sponsa | Anas Americanus cristatus elegans | 1.97 | Summer duck | 17.351 |
| | Anas Americanus lato rostro | 1.96 | Blue wing shoveler | 17.275 |
| Mergus cucullatus | Anas cristatus | 1.94 | Round crested duck | 15.437 |
| Columbus podiceps | Prodicipes minor rostro vario | 1.91 | Pied bill dopchick | 15.383 |
| Ardea Herodias | Ardea cristata maxima Americana | 3.10 | Largest crested heron | 14.113 |
| Ardea violacea | Ardea stellaris cristata Americana | 1.79 | Crested bittern | 14.134 |
| Ardea cærulea | Ardea cærulea | 1.76 | Blue heron. Crane | 14.131 |
| Ardea virescens | Ardea stellaris minima | 1.80 | Small bittern | 14.142 |
| Ardea æquinoctialis | Ardea alba minor Caroliniensis | 1.77 | Little white heron | 14.136 |
| | Ardea stellaris Americana | 1.78 | Brown bittern. Indian hen | 14.175 |
| Tantalus loculator | Pelicanus Americanus | 1.81 | Wood pelican | 13.403 |
| Tantalus alber | Numenius albus | 1.82 | White curlew | 15.62 |
| Tantalus fuscus | Numenius fuscus | 1.83 | Brown curlew | 15.64 |
| Charadrius vociferus | Pluvialis vociferus | 1.71 | Chattering plover. Kildee | 15.151 |
| Hæmatopus ostralegus | Hæmatopus | 1.85 | Oyster-catcher | 15.185 |
| Rallus Virginianus | Gallinula Americana | 1.70 | Soree. Ral-bird | 15.256 |
| Meleagris Gallopavo | Gallopava Sylvestris | xliv. | Wild turkey | 3.187.229 |
| Tetrao Virginianus | Perdix Sylvestris Virginiana | 3.12 | American partridge. American quail | 4.237 |
| | Urgallus minor, or kind of Lagopus | 3. 1 | Pheasant. Mountain partridge | 3.409 |
| Columba passerina | Turtur minimus guttatus | 1.26 | Ground dove | 4.404 |
| Columba migratorio | Palumbus migratorius | 1.23 | Pigeon of passage. Wild pigeon | 4.351 |
| Columba Caroliniensis | Turtur Caroliniensis | 1.24 | Turtle. Turtle dove | 4.401 |
| Alauda alpestris | Alauda gutture flavo | 1.32 | Lark. Sky lark | 9.79 |
| Alauda magna | Alauda magna | 1.33 | Field lark. Large lark | 6.59 |
| | Sturnus niger allis superné rubentibus | 1.13 | Red wing. Starling. Marsh blackbird | 5.293 |
| Tardus migratorius | Turdus pilaris migratorius | 1.29 | Fieldfare of Carolina. Robin redbreast | 5.426 / 9.257 |
| Tardus rufus | Turdus rufus | 1.28 | Fox colored thrush. Thrush | 5.449 |
| Tardus polyglottos | Turdus minor cinereo albus non maculatus | 1.27 | Mocking bird | 5 451 |
| | Turdus minimus | 1.31 | Little thrush | 5.400 |
| Ampelis garrulus. *b* | Garrulus Caroliniensis | 1.46 | Chatterer | 6.162 |
| Loxia Cardinalis | Coccothranstes rubra | 1.38 | Red bird. Virginia nightingale | 6.185 |
| Loxia Cærulea | Coccothranstes cærulea | 1.30 | Blue gross beak | 8.125 |
| Emberiza hyemalis | Passer nivalis | 1.36 | Snow bird | 8.47 |
| Emberiza Oryzivora | Hortulanus Caroliniensis | 1.14 | Rice bird | 8.49 |
| Emberiza Ciris | Fringilla tricolor | 1.44 | Painted finch | 7.247 |
| Tanagra cyanea | Linaria cærulea | 1.45 | Blue linnet | 7.122 |

| Linnæan Designation. | Catesby's Designation. | | Popular Names. | Buffon oiseaux. |
|---|---|---|---|---|
| | Passerculus | 1.35 | Little sparrow | 7.120 |
| | Passer fuscus | 1.34 | Cowpen bird | 7.196 |
| Fringilla erythrophthalma | Passer niger oculis rubris | 1.34 | Towhe bird | 7.201 |
| Fringilla tristis | Carduelis Americanus | 1.43 | American goldfinch. Lettuce bird | 7.297 |
| | Fringilla purpurea | 1.41 | Purple finch | 8.129 |
| Muscicapa crinita | Muscicapa cristata ventre luteo | 1.52 | Crested flycatcher | 8.379 |
| Muscicapa rubra | Muscicapa rubra | 1.56 | Summer red bird | 8.410 |
| Muscicapa ruticilla | Ruticilla Americana | 1.67 | Red start | 8.349 / 9.259 |
| Muscicapa Caroliniensis | Muscicapa vertice nigro | 1.66 | Cat bird | 8.372 |
| | Muscicapa nigrescens | 1.53 | Black cap flycatcher | 8.341 |
| | Muscicapa fusca | 1.54 | Little brown flycatcher | 8.344 |
| | Muscicapa oculis rubris | 1.54 | Red-eyed flycatcher | 8.337 |
| Motacilla Sialis | Rubicula Americana cærulea | 1.47 | Blue bird | 9.308 |
| Motacilla regulus | Regulus cristatus | 3.13 | Wren | 10.58 |
| Motacilla trochilus. *b* | Oenanthe Americana pectore luteo | 1.50 | Yellow breasted chat | 6.96 |
| Parus bicolor | Parus cristatus | 1.57 | Crested titmouse | 10.181 |
| Parus Americanus | Parus fringillaris | 1.64 | Finch creeper | 9.442 |
| Parus Virginianus | Parus uropygeo luteo | 1.58 | Yellow rump | 10.184 |
| | Parus cucullo nigro | 1.60 | Hooded titmouse | 10.183 |
| | Parus Americanus gutture luteo | 1.62 | Yellow throated creeper | ..... |
| | Parus Caroliniensis | 1 63 | Yellow titmouse | 9.431 |
| Hirundo Pelasgia | Hirundo cauda aculeata Americana | 3. 8 | American swallow | 12.478 |
| Hirundo purpurea | Hirundo purpurea | 1.51 | Purple martin. House martin | 12.445 |
| Caprimulgus Europæus. *a* | Caprimulgus | 1. 8 | Goatsucker. Great bat | 12.243 |
| Caprimulgus Europæus. *b* | Caprimulgus minor Americanus | 3.16 | Whip-poor-will | 12.246 |

The Greatest owl, or night hawk.
Wet hawk, which feeds flying.
Raven.
Water Pelican of the Mississippi, whose pouch holds a peck.
Swan.
Loon.
Cormorant.
Duck and mallard.
Widgeon.
Sheldrach, or Canvas back.
Black head.
Ballcoot.
The Sprigtail.
Didapper, or dopchick.
Spoon-billed duck.
Water-witch.
Water-pheasant.
Mow-bird.
Blue Peter.
Water Wagtail.
Yellow-legged Snipe.
Squatting Snipe.
Small Plover.
Whistling Plover.
Woodcock.
Red bird, with black head, wings and tail.

And doubtless many others which have not yet been described and classed.

To this catalogue of our indigenous animals, I will add a short account of an anomaly of nature, taking place sometimes in the race of negroes brought from Africa, who, though black themselves, have, in rare instances, white children, called Albinos. I have known four of these myself, and have faithful accounts of three others. The circumstances in which all the individuals agree are these. They are of a pallid cadaverous white, untinged with red, without any colored spots or seams; their hair of the same kind of white, short, coarse, and curled as is that of the negro; all of them well formed, strong, healthy, perfect in their senses, except that of sight, and born of parents who had no mixture of white blood. Three of these Albinos were sisters, having two other full sisters, who were black. The youngest

of the three was killed by lightning, at 12 years of age. The eldest died at about 27 years of age, in child-bed, with her second child. The middle one is now alive, in health, and has issue, as the eldest had, by a black man, which issue was black. They are uncommonly shrewd, quick in their apprehensions and in reply. Their eyes are in a perpetual tremulous vibration, very weak, and much affected by the sun; but they see much better in the night than we do. They are of the property of Colonel Skipwith, of Cumberland. The fourth is a negro woman, whose parents came from Guinea, and had three other children, who were of their own color. She is freckled, her eye-sight so weak that she is obliged to wear a bonnet in the summer; but it is better in the night than day. She had an Albino child by a black man. It died at the age of a few weeks. These were the property of Colonel Carter, of Albemarle. A sixth instance is a woman the property of Mr. Butler, near Petersburg. She is stout and robust, has issue a daughter, jet black, by a black man. I am not informed as to her eye-sight. The seventh instance is of a male belonging to a Mr. Lee of Cumberland. His eyes are tremulous and weak. He is tall of stature, and now advanced in years. He is the only male of the Albinos which have come within my information. Whatever be the cause of the disease in the skin, or in its coloring matter, which produces this change, it seems more incident to the female than male sex.

To these I may add the mention of a negro man within my own knowledge, born black, and of black parents; on whose chin, when a boy, a white spot appeared. This continued to increase till he became a man, by which time it had extended over his chin, lips, one cheek, the under jaw, and neck on that side. It is of the Albino white, without any mixture of red, and has for several years been stationary. He is robust and healthy, and the change of color was not accompanied with any sensible disease, either general or topical.

Of our fish and insects there has been nothing like a full description or collection. More of them are described in Catesby than in any other work. Many also are to be found in Sir Hans Sloane's Jamaica, as being common to that and this country. The honey-bee is not a native of our continent. Marcgrave, indeed, mentions a species of honey-bee in Brazil. But this has no sting, and is therefore different from the one we have, which resembles perfectly that of Europe. The Indians concur with us in the tradition that it was brought from Europe; but when, and by whom, we know not. The bees have generally extended themselves into the country, a little in advance of the white settlers. The Indians, therefore, call them the white man's fly, and consider their approach as indicating the approach of the settlements of the whites. A question here occurs, How far northwardly have these insects been found? That they are unknown in Lapland, I infer

from Scheffer's information, that the Laplanders eat the pine bark, prepared in a certain way, instead of those things sweetened with sugar. "Hoc comedunt pro rebus saccharo conditis." Scheff. Lapp. c. 18. Certainly if they had honey, it would be a better substitute for sugar than any preparation of the pine bark. Kalm tells us[1] the honey-bee cannot live through the winter in Canada. They furnish then an additional fact first observed by the Count de Buffon, and which has thrown such a blaze of light on the field of natural history, that no animals are found in both continents, but those which are able to bear the cold of those regions where they probably join.

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## QUERY VII.

*A notice of all that can increase the progress of Human Knowledge?*

Under the latitude of this query, I will presume it not improper nor unacceptable to furnish some data for estimating the climate of Virginia. Journals of observations on the quantity of rain, and degree of heat, being lengthy, confused, and too minute to produce general and distinct ideas, I have taken five years' observations, to wit, from 1772 to 1777, made in Williamsburg and its neighborhood, have reduced them to an average for every month in the year, and stated those averages in the following table, adding

[1] I. 126.

an analytical view of the winds during the same period.

| | Fall of rain, etc., in inches. | Least and greatest daily heat, by Fahrenheit's thermometer. | Winds. | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | N. | N.E. | E. | S.E. | S. | S.W. | W. | N.W | Total. |
| Jan... | 3.102 | 38½ to 44 | 73 | 47 | 32 | 10 | 11 | 78 | 40 | 46 | 337 |
| Feb. . | 2.049 | 41 to 47½ | 61 | 52 | 24 | 11 | 4 | 63 | 30 | 31 | 276 |
| Mar. . | 3.95 | 48 to 54½ | 49 | 44 | 38 | 28 | 14 | 83 | 29 | 33 | 318 |
| April . | 3.68 | 56 to 62½ | 35 | 44 | 54 | 19 | 9 | 58 | 18 | 20 | 257 |
| May . | 2.871 | 63 to 70½ | 27 | 36 | 62 | 23 | 7 | 74 | 32 | 20 | 281 |
| June.. | 3.751 | 71½ to 78¼ | 22 | 34 | 43 | 24 | 13 | 81 | 25 | 25 | 267 |
| July . | 4.497 | 77 to 82½ | 41 | 44 | 75 | 15 | 7 | 95 | 32 | 19 | 328 |
| Aug... | 9.153 | 76¼ to 81 | 43 | 52 | 40 | 30 | 9 | 103 | 27 | 30 | 334 |
| Sept. . | 4.761 | 69½ to 74¼ | 70 | 60 | 51 | 18 | 10 | 81 | 18 | 37 | 345 |
| Oct... | 3.633 | 61¼ to 66½ | 52 | 77 | 64 | 15 | 6 | 56 | 23 | 34 | 327 |
| Nov. . | 2.617 | 47¾ to 53½ | 74 | 21 | 20 | 14 | 9 | 63 | 35 | 58 | 294 |
| Dec. . | 2.877 | 43 to 48¾ | 64 | 37 | 18 | 16 | 10 | 91 | 42 | 56 | 334 |
| Total. | 47.038 | 8 A.M. to 4 P.M. | 611 | 548 | 521 | 223 | 109 | 926 | 351 | 409 | 3,698 |

The rains of every month, (as of January, for instance,) through the whole period of years, were added separately, and an average drawn from them. The coolest and warmest point of the same day in each year of the period, were added separately, and an average of the greatest cold and greatest heat of that day was formed. From the averages of every day in the month, a general average was formed. The point from which the wind blew, was observed two or three times in every day. These observations, in the month of January, for instance, through the whole period, amounted to three hundred and thirty-seven. At seventy-three of these, the wind was from the north; forty-seven from the north-east, etc. So that it will be easy to see in what pro-

portion each wind usually prevails in each month; or, taking the whole year, the total of observations through the whole period having been three thousand six hundred and ninety-eight, it will be observed that six hundred and eleven of them were from the north, five hundred and fifty-eight from the north-east, etc.

Though by this table it appears we have on an average forty-seven inches of rain annually, which is considerably more than usually falls in Europe, yet from the information I have collected, I suppose we have a much greater proportion of sunshine here than there. Perhaps it will be found, there are twice as many cloudy days in the middle parts of Europe, as in the United States of America. I mention the middle parts of Europe, because my information does not extend to its northern or southern parts.

In an extensive country, it will of course be expected that the climate is not the same in all its parts. It is remarkable, that proceeding on the same parallel of latitude westwardly, the climate becomes colder in like manner as when you proceed northwardly. This continues to be the case till you attain the summit of the Alleghany, which is the highest land between the ocean and the Mississippi. From thence, descending in the same latitude to the Mississippi, the change reverses; and, if we may believe travellers, it becomes warmer there than it is in the same latitude on the sea-side. Their testimony is

strengthened by the vegetables and animals which subsist and multiply there naturally, and do not on the sea-coast. Thus Catalpas grow spontaneously on the Mississippi, as far as the latitude of 37°, and reeds as far as 38°. Parroquets even winter on the Scioto, in the 39th degree of latitude. In the summer of 1779, when the thermometer was at 90° at Monticello, and 96° at Williamsburg, it was 110° at Kaskaskia. Perhaps the mountain, which overhangs this village on the north side, may, by its reflection, have contributed somewhat to produce this heat. The difference of temperature of the air at the sea-coast, or on the Chesapeake bay, and at the Alleghany, has not been ascertained; but contemporary observations, made at Williamsburg, or in its neighborhood, and at Monticello, which is on the most eastern ridge of the mountains, called the South-West, where they are intersected by the Rivanna, have furnished a ratio by which that difference may in some degree be conjectured. These observations make the difference between Williamsburg and the nearest mountains, at the position before mentioned, to be on an average 6⅓° of Fahrenheit's thermometer. Some allowance, however, is to be made for the difference of latitude between these two places, the latter being 38° 8′ 17″, which is 52′ 22″ north of the former. By contemporary observations of between five and six weeks, the averaged and almost unvaried difference of the height of mercury in the barometer, at those two

places, was .784 of an inch, the atmosphere at Monticello being so much the lightest, that is to say, about one-thirty-seventh of its whole weight. It should be observed, however, that the hill of Monticello is of five hundred feet perpendicular height above the river which washes its base. This position being nearly central between our northern and southern boundaries, and between the bay and Alleghany, may be considered as furnishing the best average of the temperature of our climate. Williamsburg is much too near the south-eastern corner to give a fair idea of our general temperature.

But a more remarkable difference is in the winds which prevail in the different parts of the country. The following table exhibits a comparative view of the winds prevailing at Williamsburg, and at Monticello. It is formed by reducing nine months' observations at Monticello to four principal points, to wit, the north-east, south-east, south-west, and north-west; these points being perpendicular to, or parallel with our coast, mountains, and rivers; and by reducing in like manner, an equal number of observations, to wit, four hundred and twenty-one from the preceding table of winds at Williamsburg, taking them proportionably from every point:

| | N. E. | S. E. | S. W. | N. W. | Total. |
|---|---|---|---|---|---|
| Williamsburg, | 127 | 61 | 132 | 101 | 421 |
| Monticello, | 32 | 91 | 126 | 172 | 421 |

By this it may be seen that the south-west wind prevails equally at both places; that the north-east

is, next to this, the principal wind towards the sea-coast, and the north-west is the predominant wind at the mountains. The difference between these two winds to sensation, and in fact, is very great. The north-east is loaded with vapor, insomuch, that the salt-makers have found that their crystals would not shoot while that blows; it brings a distressing chill, and is heavy and oppressive to the spirits. The north-west is dry, cooling, elastic, and animating. The eastern and south-eastern breezes come on generally in the afternoon. They have advanced into the country very sensibly within the memory of people now living. They formerly did not penetrate far above Williamsburg. They are now frequent at Richmond, and every now and then reach the mountains. They deposit most of their moisture, however, before they get that far. As the lands become more cleared, it is probable they will extend still further westward.

Going out into the open air, in the temperate, and warm months of the year, we often meet with bodies of warm air, which passing by us in two or three seconds, do not afford time to the most sensible thermometer to seize their temperature. Judging from my feelings only, I think they approach the ordinary heat of the human body. Some of them, perhaps, go a little beyond it. They are of about twenty to thirty feet diameter horizontally. Of their height we have no experience, but probably they are globular volumes wafted or rolled along with the wind.

But whence taken, where found, or how generated? They are not to be ascribed to volcanoes, because we have none. They do not happen in the winter when the farmers kindle large fires in clearing up their grounds. They are not confined to the spring season, when we have fires which traverse whole counties, consuming the leaves which have fallen from the trees. And they are too frequent and general to be ascribed to accidental fires. I am persuaded their cause must be sought for in the atmosphere itself, to aid us in which I know but of these constant circumstances: a dry air; a temperature as warm, at least, as that of the spring or autumn; and a moderate current of wind. They are most frequent about sun-set; rare in the middle parts of the day; and I do not recollect having ever met with them in the morning.

The variation in the weight of our atmosphere, as indicated by the barometer, is not equal to two inches of mercury. During twelve months' observation at Williamsburg, the extremes 29 and 30.86 inches, the difference being 1.86 of an inch; and in nine months, during which the height of the mercury was noted at Monticello, the extremes were 28.48 and 29.69 inches, the variation being 1.21 of an inch. A gentleman, who has observed his barometer many years, assures me it has never varied two inches. Contemporary observations made at Monticello and Williamsburg, proved the variations in the weight of air to be simultaneous and corresponding in these two places.

Our changes from heat to cold, and cold to heat, are very sudden and great. The mercury in Fahrenheit's thermometer has been known to descend from 92° to 47° in thirteen hours.

It was taken for granted, that the preceding table of average heat will not give a false idea on this subject, as it proposes to state only the ordinary heat and cold of each month, and not those which are extraordinary. At Williamsburg, in August, 1766, the mercury in Fahrenheit's thermometer was at 98°, corresponding with 29⅓ of Reaumur. At the same place in January 1780, it was 6°, corresponding with 11½ below zero of Reaumur. I believe[1] these may be considered to be nearly the extremes of heat and cold in that part of the country. The latter may most certainly, as that time York river, at Yorktown, was frozen over, so that people walked across it; a circumstance which proves it to have been colder than the winter of 1740–1741, usually called the cold winter, when York river did not freeze over at that place. In the same season of 1780, Chesapeake bay was solid, from its head to the mouth of Potomac. At Annapolis, where it is 5¼ miles over between the nearest points of land, the ice was from five to seven inches thick quite across, so that loaded carriages went over on it. Those, our extremes of heat and cold, of 6° and 98°, were indeed

[1] At Paris, in 1753, the mercury in Reaumur's thermometer was at 30½ above zero, and in 1776, it was at 16 below zero. The extremities of heat and cold therefore at Paris, are greater than at Williamsburg, which is in the hottest part of Virginia.

very distressing to us, and were thought to put the extent of the human constitution to considerable trial. Yet a Siberian would have considered them as scarcely a sensible variation. At Jenniseitz in that country, in latitude 58° 27′, we are told that the cold in 1735 sunk the mercury by Fahrenheit's scale to 126° below nothing; and the inhabitants of the same country use stove rooms two or three times a week, in which they stay two hours at a time, the atmosphere of which raises the mercury to 135° above nothing. Late experiments show that the human body will exist in rooms heated to 140° of Reaumur, equal to 347° of Fahrenheit's, and 135° above boiling water. The hottest point of the twenty-four hours is about four o'clock, P. M., and the dawn of day the coldest.

The access of frost in autumn, and its recess the spring, do not seem to depend merely on the degree of cold; much less on the air's being at the freezing point. White frosts are frequent when the thermometer is at 47°, have killed young plants of Indian corn at 48°, and have been known at 54°. Black frost, and even ice, have been produced at 38½°, which is 6½ degrees above the freezing point. That other circumstances must be combined with this cold to produce frost, is evident from this also, on the higher parts of mountains, where it is absolutely colder than in the plains on which they stand, frosts do not appear so early by a considerable space of time in autumn, and go off sooner in the spring, than in

the plains. I have known frosts so severe as to kill the hickory trees round about Monticello, and yet not injure the tender fruit blossoms then in bloom on the top and higher parts of the mountain; and in the course of forty years, during which it had been settled, there have been but two instances of a general loss of fruit on it; while in the circumjacent country, the fruit has escaped but twice in the last seven years. The plants of tobacco, which grow from the roots of those which have been cut off in the summer, are frequently green here at Christmas. This privilege against the frost is undoubtedly combined with the want of dew on the mountains. That the dew is very rare on their higher parts, I may say with certainty, from twelve years' observations, having scarcely ever, during that time, seen an unequivocal proof of its existence on them at all during summer. Severe frosts in the depth of winter prove that the region of dews extends higher in that season than the tops of the mountains; but certainly, in the summer season, the vapors, by the time they attain that height, are so attenuated as not to subside and form a dew when the sun retires. The weavil has not yet ascended the high mountains.

A more satisfactory estimate of our climate to some, may perhaps be formed, by noting the plants which grow here, subject, however, to be killed by our severest colds. These are the fig, pomegranate, artichoke, and European walnut. In mild winters,

lettuce and endive require no shelter; but, generally, they need a slight covering. I do not know that the want of long moss, reed, myrtle, swamp laurel, holly, and cypress, in the upper country proceeds from a greater degree of cold, nor that they were ever killed with any degree of cold, nor that they were ever killed with any degree of cold in the lower country. The aloe lived in Williamsburg, in the open air, through the severe winter of 1779, 1780.

A change in our climate, however, is taking place very sensibly. Both heats and colds are become much more moderate within the memory even of the middle-aged. Snows are less frequent and less deep. They do not often lie, below the mountains, more than one, two, or three days, and very rarely a week. They are remembered to have been formerly frequent, deep, and of long continuance. The elderly inform me, the earth used to be covered with snow about three months in every year. The rivers, which then seldom failed to freeze over in the course of the winter, scarcely ever do so now. This change has produced an unfortunate fluctuation between heat and cold, in the spring of the year, which is very fatal to fruits. From the year 1741 to 1769, an interval of twenty-eight years, there was no instance of fruit killed by the frost in the neighborhood of Monticello. An intense cold, produced by constant snows, kept the buds locked up till the sun could obtain, in the spring of the year, so fixed an ascendency as to dissolve those snows, and protect

the buds, during their development, from every danger of returning cold. The accumulated snows of the winter remaining to be dissolved all together in the spring, produced those overflowings of our rivers, so frequent then, and so rare now.

Having had occasion to mention the particular situation of Monticello for other purposes, I will just take notice that its elevation affords an opportunity of seeing a phenomenon which is rare at land, though frequent at sea. The seamen call it *looming*. Philosophy is as yet in the rear of the seamen, for so far from having accounted for it, she has not given it a name. Its principal effect is to make distant objects appear larger, in opposition to the general law of vision, by which they are diminished. I knew an instance, at Yorktown, from whence the water prospect eastwardly is without termination, wherein a canoe with three men, at a great distance was taken for a ship with its three masts. I am little acquainted with the phenomenon as it shows itself at sea; but at Monticello it is familiar. There is a solitary mountain about forty miles off in the South, whose natural shape, as presented to view there, is a regular cone; but by the effect of looming, it sometimes subsides almost totally in the horizon; sometimes it rises more acute and more elevated; sometimes it is hemispherical; and sometimes its sides are perpendicular, its top flat, and as broad as its base. In short, it assumes at times the most whimsical shapes, and all these perhaps successively

in the same morning. The blue ridge of mountains comes into view, in the north-east, at about one hundred miles distance, and approaching in a direct line, passes by within twenty miles, and goes off to the south-west. This phenomenon begins to show itself on these mountains, at about fifty miles distance, and continues beyond that as far as they are seen. I remark no particular state, either in the weight, moisture, or heat of the atmosphere, necessary to produce this. The only constant circumstances are its appearance in the morning only, and on objects at least forty or fifty miles distant. In this latter circumstance, if not in both, it differs from the looming on the water. Refraction will not account for the metamorphosis. That only changes the proportions of length and breadth, base and altitude, preserving the general outlines. Thus it may make a circle appear elliptical, raise or depress a cone, but by none of its laws, as yet developed, will it make a circle appear a square, or a cone a sphere.

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## QUERY VIII.

### *The number of its inhabitants?*

The following table shows the number of persons imported for the establishment of our colony in its infant state, and the census of inhabitants at different periods, extracted from our historians and public records, as particularly as I have had opportunities

| Years. | Settlers Imported. | Census of Inhabitants. | Census of Tythes. |
|---|---|---|---|
| 1607 | 100 | ..... | ..... |
| .. | ..... | 40 | ..... |
| .. | 120 | ..... | ..... |
| 1608 | ..... | 130 | ..... |
| .. | 70 | ..... | ..... |
| 1609 | ..... | 490 | ..... |
| .. | 16 | ..... | ..... |
| .. | ..... | 60 | ..... |
| 1610 | 150 | ..... | ..... |
| .. | ..... | 200 | ..... |
| 1611 | 3 shiploads. | ..... | ..... |
| .. | 300 | ..... | ..... |
| 1612 | 80 | ..... | ..... |
| 1617 | ..... | 400 | ..... |
| 1618 | 200 | ..... | ..... |
| .. | 40 | ..... | ..... |
| .. | ..... | 600 | ..... |
| 1619 | 1,216 | ..... | ..... |
| 1621 | 1,300 | ..... | ..... |
| 1622 | ..... | 3,800 | ..... |
| .. | ..... | 2,500 | ..... |
| 1628 | ..... | 3,000 | ..... |
| 1632 | ..... | ..... | 2,000 |
| 1644 | ..... | ..... | 4,822 |
| 1645 | ..... | ..... | 5,000 |
| 1652 | ..... | ..... | 7,000 |
| 1654 | ..... | ..... | 7,209 |
| 1700 | ..... | ..... | 22,000 |
| 1748 | ..... | ..... | 82,100 |
| 1759 | ..... | ..... | 105,000 |
| 1772 | ..... | ..... | 153,000 |
| 1782 | ..... | 567,614 | ..... |

and leisure to examine them. Successive lines in the same year show successive periods of time in that year. I have stated the census in two different columns, the whole inhabitants having been sometimes numbered, and sometimes the *tythes* only. This term, with us, includes the free males above sixteen years of age, and slaves above that age of both sexes. A further examination of our records would render this history of our population much more satisfactory and perfect, by furnishing a greater number of intermediate terms. These, however,

which are here stated will enable us to calculate, with a considerable degree of precision, the rate at which we have increased. During the infancy of the colony, while numbers were small, wars, importations, and other accidental circumstances render the progression fluctuating and irregular. By the year 1654, however, it becomes tolerably uniform, importations having in a great measure ceased from the dissolution of the company, and the inhabitants become too numerous to be sensibly affected by Indian wars. Beginning at that period, therefore, we find that from thence to the year 1772, our tythes had increased from 7,209 to 153,000. The whole term being of one hundred and eighteen years, yields a duplication once in every twenty-seven and a quarter years. The intermediate enumerations taken in 1700, 1748, and 1759, furnish proofs of the uniformity of this progression. Should this rate of increase continue, we shall have between six and seven millions of inhabitants within ninety-five years. If we suppose our country to be bounded, at some future day, by the meridian of the mouth of the Great Kanhaway, (within which it has been before conjectured, are 64,461 square miles) there will then be one hundred inhabitants for every square mile, which is nearly the state of population in the British Islands.

Here I will beg leave to propose a doubt. The present desire of America is to produce rapid population by as great importations of foreigners as pos-

sible. But is this founded in good policy? The advantage proposed is the multiplication of numbers. Now let us suppose (for example only) that, in this state, we could double our numbers in one year by the importation of foreigners; and this is a greater accession than the most sanguine advocate for emigration has a right to expect. Then I say, beginning with a double stock, we shall attain any given degree of population only twenty-seven years, and three months sooner than if we proceed on our single stock. If we propose four millions and a half as a competent population for this State, we should be fifty-four and a half years attaining it, could we at once double our numbers; and eighty-one and three quarter years, if we rely on natural propagation, as may be seen by the following tablet:

| | Proceeding on our present stock. | Proceeding on a double stock. |
|---|---|---|
| 1781 | 567,614 | 1,135,228 |
| 1808¼ | 1,135,228 | 2,270,456 |
| 1835½ | 2,270,456 | 4,540,912 |
| 1862¾ | 4,540,912 | |

In the first column are stated periods of twenty-seven and a quarter years; in the second are our numbers at each period, as they will be if we proceed on our actual stock; and in the third are what they would be, at the same periods, were we to set out from the double of our present stock. I have taken the term of four million and a half of inhabitants for example's sake only. Yet I am persuaded it is a greater number than the country spoken of, consid-

ering how much inarable land it contains, can clothe and feed without a material change in the quality of their diet. But are there no inconveniences to be thrown into the scale against the advantage expected from a multiplication of numbers by the importation of foreigners? It is for the happiness of those united in society to harmonize as much as possible in matters which they must of necessity transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours perhaps are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet from such we are to expect the greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness, passing, as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share with us the legislation. They will infuse into it their spirit, warp and bias its directions, and render it a heterogeneous, incoherent, distracted

mass. I may appeal to experience, during the present contest, for a verification of these conjectures. But, if they be not certain in event, are they not possible, are they not probable? Is it not safer to wait with patience twenty-seven years and three months longer, for the attainment of any degree of population desired or expected? May not our government be more homogeneous, more peaceable, more durable? Suppose twenty millions of republican Americans thrown all of a sudden into France, what would be the condition of that kingdom? If it would be more turbulent, less happy, less strong, we may believe that the addition of half a million of foreigners to our present numbers would produce a similar effect here. If they come of themselves they are entitled to all the rights of citizenship; but doubt the expediency of inviting them by extraordinary encouragements. I mean not that these doubts should be extended to the importation of useful artificers. The policy of that measure depends on very different considerations. Spare no expense in obtaining them. They will after a while go to the plough and the hoe; but, in the mean time, they will teach us something we do not know. It is not so in agriculture. The indifferent state of that among us does not proceed from a want of knowledge merely; it is from our having such quantities of land to waste as we please. In Europe the object is to make the most of their land, labor being abundant; here it is to make the most of our labor, land being abundant.

It will be proper to explain how the numbers for the year 1782 have been obtained; as it was not from a perfect census of the inhabitants. It will at the same time develope the proportion between the free inhabitants and slaves. The following return of taxable articles for that year was given in:

53,289 free males above twenty-one years of age.
211,698 slaves of all ages and sexes.
23,766 not distinguished in the returns, but said to be tytheable slaves.
195,439 horses.
609,734 cattle.
5,126 wheels of riding-carriages.
191 taverns.

There were no returns from the eight counties of Lincoln, Jefferson, Fayette, Monongalia, Yohogania, Ohio, Northampton, and York. To find the number of slaves which should have been returned instead of the 23,766 tytheables, we must mention that some observations on a former census had given reason to believe that the numbers above and below sixteen years of age were equal. The double of this number, therefore, to wit, 47,532 must be added to 211,698, which will give us 259,230 slaves of all ages and sexes. To find the number of free inhabitants we must repeat the observation that those above and below sixteen are nearly equal. But as the number 53,289 omits the males below sixteen and twenty-one we must supply them from conjecture. On a former experiment it had appeared

that about one-third of our militia, that is, of the males between sixteen and fifty, were unmarried. Knowing how early marriage takes place here, we shall not be far wrong in supposing that the unmarried part of our militia are those between sixteen and twenty-one. If there be young men who do not marry till after twenty-one, there are many who marry before that age. But as men above fifty were not included in the militia, we will suppose the unmarried, or those between sixteen and twenty-one, to be one-fourth of the whole number above sixteen, then we have the following calculation:

53,289 free males above twenty-one years of age.
17,763 free males between sixteen and twenty-one.
17,052 free males under sixteen.
142,104 free males of all ages.

284,208 free inhabitants of all ages.
259,230 slaves of all ages.

543,438 inhabitants, exclusive of the eight counties from which were no returns. In these eight counties in the years 1779 and 1780, were 3,161 militia. Say then,

3,161 free males above the age of sixteen.
3,161 free males under sixteen.
6,322 free females.

12,644 free inhabitants in these eight counties. To find the number of slaves, say, as 284,208 to 259,-

230, so is 12,644 to 11,532. Adding the third of these numbers to the first, and the fourth to the second, we have,

296,852 free inhabitants.
270,762 slaves.

567,614 inhabitants of every age, sex and condition. But 296,852, the number of free inhabitants, are to 270,762, the number of slaves, nearly as 11 to 10. Under the mild treatment our slaves experience, and their wholesome, though coarse food, this blot in our country increases as fast, or faster than the whites. During the regal government we had at one time obtained a law which imposed such a duty on the importation of slaves as amounted nearly to a prohibition, when one inconsiderate assembly, placed under a peculiarity of circumstance, repealed the law. This repeal met a joyful sanction from the then reigning sovereign, and no devices, no expedients, which could ever be attempted by subsequent assemblies, and they seldom met without attempting them, could succeed in getting the royal assent to a renewal of the duty. In the very first session held under the republican government, the assembly passed a law for the perpetual prohibition of the importation of slaves. This will in some measure stop the increase of this great political and moral evil, while the minds of our citizens may be ripening for a complete emancipation of human nature.

## QUERY IX.

*The number and condition of the Militia and Regular Troops, and their Pay?*

The following is a state of the militia, taken from returns of 1780 and 1781, except in those counties marked with an asterisk, the returns from which are somewhat older.

| Situation. | Counties. | Militia. | Situation. | Counties. | Militia. |
|---|---|---|---|---|---|
| Between the Blue Ridge and Tide Waters. 18,828. — Westward of the Alleghany 4,458. | Lincoln | 600 | On the Tide Waters, and in that Parallel, 19,012. — Between James River and Carolina. 6,959. | Greensville | 500 |
| | Jefferson | 300 | | Dinwiddie | *750 |
| | Fayette | 156 | | Chesterfield | 665 |
| | Ohio | ..... | | Prince George | 328 |
| | Monongalia | *1,000 | | Surrey | 380 |
| | Washington | *822 | | Sussex | *700 |
| | Montgomery | 1,079 | | Southampton | 874 |
| | Greenbriar | 501 | | Isle of White | *600 |
| Between the Alleghany and Blue Ridge. 7,673. | Hampshire | 930 | | Nansemond | *644 |
| | Berkeley | *1,100 | | Norfolk | *880 |
| | Frederick | 1,143 | | Prince Anne | *594 |
| | Shenando | *925 | Between James & York Rivers. 3,009. | Henrico | 619 |
| | Rockingham | 875 | | Hanover | 706 |
| | Augusta | 1,375 | | New Kent | *418 |
| | Rockbridge | *625 | | Charles City | 286 |
| | Boutetourt | *700 | | James City | 235 |
| | Loudoun | 1,746 | | Williamsburgh | 129 |
| | Faquier | 1,078 | | York | *244 |
| | Culpepper | 1,513 | | Warwick | *100 |
| | Spotsylvania | 480 | | Elizabeth City | 182 |
| | Orange | *600 | Bet. York and Rappahannock. 3,269. | Caroline | 805 |
| | Louisa | 603 | | King William | 436 |
| | Goochland | *550 | | King and Queen | 500 |
| | Fluvanna | *296 | | Essex | 468 |
| | Albemarle | 873 | | Middlesex | *210 |
| | Amherst | 896 | | Gloucester | 850 |
| | Buckingham | *625 | | Fairfax | 652 |
| | Bedford | 1,300 | Between Rappahannock and Powtomac. 4,137. | Prince William | 614 |
| | Henry | 1,004 | | Stafford | *500 |
| | Pittsylvania | *725 | | King George | 483 |
| | Halifax | *1,139 | | Richmond | 412 |
| | Charlotte | 612 | | Westmoreland | 544 |
| | Prince Edward | 589 | | Northumberland | 630 |
| | Cumberland | 408 | | Lancaster | 332 |
| | Powhatan | 330 | East'n Shore. 1,638. | Accomac | *1,208 |
| | Amelia | *1,125 | | Northampton | *430 |
| | Lunenburg | 677 | | | |
| | Mecklenburg | 1,100 | | | |
| | Brunswick | 559 | Whole Militia of the State... | | 49,971 |

Every able-bodied freeman, between the ages of sixteen and fifty, is enrolled in the militia. Those of every county are formed into companies, and these again into one or more battalions, according to the numbers in the county. They are commanded by colonels, and other subordinate officers, as in the regular service. In every county is a county-lieutenant, who commands the whole militia of his county, but ranks only as a colonel in the field. We have no general officers always existing. These are appointed occasionally, when an invasion or insurrection happens, and their commission determines with the occasion. The Governor is head of the military, as well as civil power. The law requires every militia-man to provide himself with the arms usual in the regular service. But this injunction was always indifferently complied with, and the arms they had, have been so frequently called for to arm the regulars, that in the lower parts of the country they are entirely disarmed. In the middle country a fourth or fifth part of them may have such firelocks as they had provided to destroy the noxious animals which infest their farms; and on the western side of the Blue Ridge they are generally armed with rifles. The pay of our militia, as well as of our regulars, is that of the continental regulars. The condition of our regulars, of whom we have none but continentals, and part of a battalion of state troops, is so constantly on the change, that a state of it at this day would not

be its state a month hence. It is much the same with the condition of the other continental troops, which is well enough known.

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QUERY X.

*The Marine?*

Before the present invasion of this State by the British, under the command of General Phillips, we had three vessels of sixteen guns, one of fourteen, five small gallies, and two or three armed boats. They were generally so badly manned as seldom to be in a condition for service. Since the perfect possession of our rivers assumed by the enemy, I believe we are left with a single armed boat only.

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QUERY XI.

*A description of the Indians established in that State?*

When the first effectual settlement of our colony was made, which was in 1607, the country from the seacoast to the mountains, and from the Potomac to the most southern waters of James' river, was occupied by upwards of forty different tribes of Indians. Of these the *Powhatans*, the *Mannahoacs*, and *Monacans*, were the most powerful. Those between the seacoast and falls of the rivers, were in amity with one another, and attached to the

*Powhatans* as their link of union. Those between the falls of the rivers and the mountains, were divided into two confederacies; the tribes inhabiting the head waters of Potomac and Rappahannock, being attached to the *Mannahoacs;* and those on the upper parts of James' river to the *Monacans*. But the *Monacans* and their friends were in amity with the *Mannahoacs* and their friends, and waged joint and perpetual war against the *Powhatans*. We are told that the *Powhatans*, *Mannahoacs*, and *Monacans*, spoke languages so radically different, that interpreters were necessary when they transacted business. Hence we may conjecture, that this was not the case between all the tribes, and, probably, that each spoke the language of the nation to which it was attached; which we know to have been the case in many particular instances. Very possibly there may have been anciently three different stocks, each of which multiplying in a long course of time, had separated into so many little societies. This practice results from the circumstance of their having never submitted themselves to any laws, any coercive power, any shadow of government. Their only controls are their manners, and that moral sense of right and wrong, which, like the sense of tasting and feeling in every man, makes a part of his nature. An offence against these is punished by contempt, by exclusion from society, or, where the case is serious, as that of murder, by the individuals whom it concerns. Im-

perfect as this species of coercion may seem, crimes are very rare among them; insomuch that were it made a question, whether no law, as among the savage Americans, or too much law, as among the civilized Europeans, submits man to the greatest evil, one who has seen both conditions of existence would pronounce it to be the last; and that the sheep are happier of themselves, than under care of the wolves. It will be said, the great societies cannot exist without government. The savages, therefore, break them into small ones.

The territories of the *Powhatan* confederacy, south of the Potomac, comprehended about eight thousand square miles, thirty tribes, and two thousand four hundred warriors. Captain Smith tells us, that within sixty miles of Jamestown were five thousand people, of whom one thousand five hundred were warriors. From this we find the proportion of their warriors to their whole inhabitants, was as three to ten. The *Powhatan* confederacy, then, would consist of about eight thousand inhabitants, which was one for every square mile; being about the twentieth part of our present population in the same territory, and the hundredth of that of the British islands.

Besides these were the *Nottoways*, living on Nottoway river, the *Meherrins* and *Tuteloes* on Meherrin river, who were connected with the Indians of Carolina, probably with the *Chowanocs*.

NORTH.

WEST.

EAST.

## MANNAHOACS.

| | Tribes. | Country. | Chief Towns. | Warr's. 1669. |
|---|---|---|---|---|
| Between Patowmac and Rappahannoc. | Whonkenties. | Fauquier. | | |
| | Tegninaties. | Culpepper. | | |
| | Ontponies. | Orange. | | |
| | Tauxitanians. | Fauquier. | | |
| | Hassinungaes. | Culpepper. | | |
| Bet. Rappahannoc & York. | Stegarakies. | Orange. | | |
| | Shackakonies. | Spotsylvania. | | |
| | Manahoacs. | Stafford. | | |
| | | Spotsylvania. | | |

## MONACANS.

| | Tribes. | Country. | Chief Towns. | Warr's. 1669. |
|---|---|---|---|---|
| Between York and James. | Monacans. | James river, above the falls. | Fork of James river. | 30 |
| | Monasiccapanoes. | Louisa. | | |
| | | Fluvanna. | | |
| Between James & Carolina. | Monahassanoes. | Bedford. | | |
| | | Buckingham. | | |
| | Massinacacs. | Cumberland. | | |
| | Mohemenchoes. | Powhatan. | | |
| Eastern shore. | | | | |

## POWHATANS.

| Tribes. | Country. | Chief Towns. | Warriors. 1607. | Warriors. 1669. | |
|---|---|---|---|---|---|
| Tauxenents. | Fairfax. | About Gen. Washington's. | 40 | | By the name of Matchotics, U. Matchodic, Nanzaticos, Nanzatico, Appomatox, Matox. |
| Patowomekes. | Stafford. / King George. | Pawtomac cr. | 200 | | |
| Cuttatawomans. | King George. | About Lamb creek. | 20 | 60 | |
| Pissasecs. | King George. / Richmond. | Above Leeds Town. | ... | | |
| Onaumanients. | Westmoreland. | Nomony river. | 100 | | |
| Rappahanocs. | Richmond co. | Rappahanoc creek. | 100 | 30 | By the name of Totuskeys. |
| Moaughtacunds. | Lancaster. / Richmond. | Moratico river. | 80 | 40 | |
| Secacaconies. | Northumberland. | Coan river. | 30 | | |
| Wighcocomicoes. | Northumberland. | Wicocomico river. | 130 | 70 | |
| Cuttatawomans. | Lancaster. | Corotoman. | 30 | | |
| Nantaughtacunds. | Essex. Caroline. | Port Tobacco creek. | 150 | 60 | |
| Mattapoments. | Mattapony river. | ..... | 30 | 20 | |
| Pamunkies. | King William. | Romuncock. | 300 | 50 | |
| Werowocomicos. | Gloucester. | About Rosewell. [by. | 40 | | |
| Payankatonks. | Piankatank river. | Turk's Ferry. Grimes- | 55 | | |
| Youghtanunds. | Pamunkey river. | .... ..... | 60 | | |
| Chickahominies. | Chickahominy r. | Orapaks. | 250 | 60 | |
| Powhatans. | Henrico. | Powhatan. Mayo's. | 40 | 10 | |
| Arrowhatocs. | Henrico. | Arrohatocs. | 30 | | |
| Weanocs. | Charles city. | Weynoke. | 100 | 15 | |
| Paspaheghes. | Charles city. / James city. | Sandy-Point. | 40 | | |
| Chiskiacs. | York. | Chiskiac. | 45 | 15 | |
| Kecoughtans. | Elizabeth city. | Roscows. | 20 | | |
| Appamattocs. | Chesterfield. | Bermuda Hundred. | 60 | 50 | |
| Quiocohanoes. | Surry. | About Upp. Chipoak. | 25 | 3 Pohics | |
| Warrasqueaks. | Isle of Wight. | Warrasqueoc. | ... | | |
| Nasamonds. | Nansamond. | A't mouth W. branch. | 200 | 45 | |
| Chesapeaks. | Princess Anne. | About Lynhaven riv. | 100 | | |
| Accohanocs. | Accom. / Northampton. | Accohanoc river. | 40 | | |
| Accomacks. | Northampton. | About Cheriton's. | 80 | | |

| | 1699. |
|---|---|
| Nottoways. | ... |
| Meherrics. | 90 |
| Tuteloes. | 50 |

SOUTH.

The preceding table contains a state of these several tribes, according to their confederacies and geographical situation, with their numbers when we first became acquainted with them, where these numbers are known. The numbers of some of them are again stated as they were in the year 1669, when an attempt was made by assembly to enumerate them. Probably the enumeration is imperfect, and in some measure conjectural, and that a further search into the records would furnish many more particulars. What would be the melancholy sequel of their history, may, however, be argued from the census of 1669; by which we discover that the tribes therein enumerated were, in the space of sixty-two years, reduced to about one-third of their former numbers. Spirituous liquors, the small-pox, war, and an abridgement of territory to a people who lived principally on the spontaneous productions of nature, had committed terrible havoc among them, which generation, under the obstacles opposed to it among them, was not likely to make good. That the lands of this country were taken from them by conquest, is not so general a truth as is supposed. I find in our historians and records, repeated proofs of purchase, which cover a considerable part of the lower country; and many more would doubtless be found on further search. The upper country, we know, has been acquired—altogether acquired by purchases made in the most unexceptionable form.

Westward of all these tribes, beyond the mountains, and extending to the great lakes, were the *Maffawomees*, a most powerful confederacy, who harassed unremittingly the *Powhatans* and *Mannahoacs*. These were probably the ancestors of tribes known at present by the name of the *Six Nations*.

Very little can now be discovered of the subsequent history of these tribes severally. The *Chickahominies* removed about the year 1661, to Mattapony river. Their chief, with one from each of the Pamunkies and Mattaponies, attended the treaty of Albany in 1685. This seems to have been the last chapter in their history. They retained, however, their separate name so late as 1705, and were at length blended with the Pamunkies and Mattaponies, and exist at present only under their names. There remain of the *Mattaponies* three or four men only, and have more negro than Indian blood in them. They have lost their language, have reduced themselves, by voluntary sales, to about fifty acres of land, which lie on the river of their own name, and have from time to time, been joining the Pamunkies, from whom they are distant but ten miles. The *Pamunkies* are reduced to about ten or twelve men, tolerably pure from mixture with other colors. The older ones among them preserve their language in a small degree, which are the last vestiges on earth, as far as we know, of the Powhatan language. They have about three hundred acres of very fertile land, on Pamunkey river, so

encompassed by water that a gate shuts in the whole. Of the *Nottoways*, not a male is left. A few women constitute the remains of that tribe. They are seated on Nottoway river, in Southampton country, on very fertile lands. At a very early period, certain lands were marked out and appropriated to these tribes, and were kept from encroachment by the authority of the laws. They have usually had trustees appointed, whose duty was to watch over their interests, and guard them from insult and injury.

The *Monacans* and their friends, better known latterly by the name of *Tuscaroras*, were probably connected with the Massawomecs, or Five Nations. For though we are told[1] their languages were so different that the intervention of interpreters was necessary between them, yet do we also learn[2] that the Erigas, a nation formerly inhabiting on the Ohio, were of the same original stock with the Five Nations, and that they partook also of the Tuscarora language. Their dialects might, by long separation, have become so unlike as to be unintelligible to one another. We know that in 1712, the Five Nations received the Tuscaroras into their confederacy, and made them the Sixth Nation. They received the Meherrins and Tuteloes also into their protection; and it is most probable, that the remains of many other of the tribes, of whom we find no particular account, retired westwardly in

[1] Smith.
[2] Evans.

like manner, and were incorporated with one or the other of the western tribes. See Appendix (5).

I know of no such thing existing as an Indian monument; for I would not honor with that name arrow points, stone hatchets, stone pipes, and half shapen images. Of labor on the large scale, I think there is no remain as respectable as would be a common ditch for the draining of lands; unless indeed it would be the barrows, of which many are to be found all over this country. These are of different sizes, some of them constructed of earth, and some of loose stones. That they were repositories of the dead, has been obvious to all; but on what particular occasion constructed, was a matter of doubt. Some have thought they covered the bones of those who have fallen in battles fought on the spot of interment. Some ascribed them to the custom, said to prevail among the Indians, of collecting, at certain periods, the bones of all their dead, wheresoever deposited at the time of death. Others again supposed them the general sepulchres for towns, conjectured to have been on or near these grounds; and this opinion was supported by the quality of the lands in which they are found, (those constructed of earth being generally in the softest and most fertile meadow-grounds on river sides,) and by a tradition, said to be handed down from the aboriginal Indians, that, when they settled in a town, the first person who died was placed erect, and earth put about him, so as to cover and

support him; that when another died, a narrow passage was dug to the first, the second reclined against him, and the cover of earth replaced, and so on. There being one of these in my neighborhood, I wished to satisfy myself whether any, and which of these opinions were just. For this purpose I determined to open and examine it thoroughly. It was situated on the low grounds of the Rivanna, about two miles above its principal fork, and opposite to some hills, on which had been an Indian town. It was of a spheroidical form, of about forty feet diameter at the base, and had been of about twelve feet altitude, though now reduced by the plough to seven and a half, having been under cultivation about a dozen years. Before this it was covered with trees of twelve inches diameter, and round the base was an excavation of five feet depth and width, from whence the earth had been taken of which the hillock was formed. I first dug superficially in several parts of it, and came to collections of human bones, at different depths, from six inches to three feet below the surface. These were lying in the utmost confusion, some vertical, some oblique, some horizontal, and directed to every point of the compass, entangled and held together in clusters by the earth. Bones of the most distant parts were found together, as, for instance, the small bones of the foot in the hollow of a scull; many sculls would sometimes be in contact, lying on the face, on the side, on the back, top or bottom,

so as, on the whole, to give the idea of bones emptied promiscuously from a bag or a basket, and covered over with earth, without any attention to their order. The bones of which the greatest numbers remained, were sculls, jaw-bones, teeth, the bones of the arms, thighs, legs, feet and hands. A few ribs remained, some vertebræ of the neck and spine, without their processes, and one instance only of the bone[1] which serves as a base to the vertebral column. The sculls were so tender, that they generally fell to pieces on being touched. The other bones were stronger. There were some teeth which were judged to be smaller than those of an adult; a scull, which on a slight view, appeared to be that of an infant, but it fell to pieces on being taken out, so as to prevent satisfactory examination; a rib, and a fragment of the under-jaw of a person about half grown; another rib of an infant; and a part of the jaw of a child, which had not cut its teeth. This last furnishing the most decisive proof of the burial of children here, I was particular in my attention to it. It was part of the right half of the under-jaw. The processes, by which it was attenuated to the temporal bones, were entire, and the bone itself firm to where it had been broken off, which, as nearly as I could judge, was about the place of the eye-tooth. Its upper edge, wherein would have been the sockets of the teeth, was perfectly smooth. Measuring it with that of an adult, by placing their

[1] The os sacrum.

hinder processes together, its broken end extended to the penultimate grinder of the adult. This bone was white, all the others of a sand color. The bones of infants being soft, they probably decay sooner, which might be the cause so few were found here. I proceeded then to make a perpendicular cut through the body of the barrow, that I might examine its internal structure. This passed about three feet from its centre, was opened to the former surface of the earth, and was wide enough for a man to walk through and examine its sides. At the bottom, that is, on the level of the circumjacent plain, I found bones; above these a few stones, brought from a cliff a quarter of a mile off, and from the river one-eighth of a mile off; then a large interval of earth, then a stratum of bones, and so on. At one end of the section were four strata of bones plainly distinguishable; at the other, three; the strata in one part not ranging with those in another. The bones nearest the surface were least decayed. No holes were discovered in any of them, as if made with bullets, arrows, or other weapons. I conjectured that in this barrow might have been a thousand skeletons. Every one will readily seize the circumstances above related, which militate against the opinion, that it covered the bones only of persons fallen in battle; and against the tradition also, which would make it the common sepulchre of a town, in which the bodies were placed upright, and touching each other. Appearances certainly indi-

cate that it has derived both origin and growth from the accustomary collection of bones, and deposition of them together; that the first collection had been deposited on the common surface of the earth, a few stones put over it, and then a covering of earth, that the second had been laid on this, had covered more or less of it in proportion to the number of bones, and was then also covered with earth; and so on. The following are the particular circumstances which give it this aspect. 1. The number of bones. 2. Their confused position. 3. Their being in different strata. 4. The strata in one part having no correspondence with those in another. 5. The different states of decay in these strata, which seem to indicate a difference in the time of inhumation. 6. The existence of infant bones among them.

But on whatever occasion they may have been made, they are of considerable notoriety among the Indians; for a party passing, about thirty years ago, through the part of the country where this barrow is, went through the woods directly to it, without any instructions or inquiry, and having staid about it for some time, with expressions which were construed to be those of sorrow, they returned to the high road, which they had left about half a dozen miles to pay this visit, and pursued their journey. There is another barrow much resembling this, in the low grounds of the south branch of Shenandoah, where it is crossed by the road leading

from the Rockfish gap to Staunton. Both of these have within these dozen years, been cleared of their trees and put under cultivation, are much reduced in their height, and spread in width, by the plough, and will probably disappear in time. There is another on a hill in the Blue Ridge of mountains, a few miles north of Wood's gap, which is made up of small stones thrown together. This has been opened and found to contain human bones, as the others do. There are also many others in other parts of the country.

Great question has arisen from whence came those aboriginals of America? Discoveries, long ago made, were sufficient to show that the passage from Europe to America was always practicable, even to the imperfect navigation of ancient times. In going from Norway to Iceland, from Iceland to Greenland, from Greenland to Labrador, the first traject is the widest; and this having been practised from the earliest times of which we have any account of that part of the earth, it is not difficult to suppose that the subsequent trajects may have been sometimes passed. Again, the late discoveries of Captain Cook, coasting from Kamschatka to California, have proved that if the two continents of Asia and America be separated at all, it is only by a narrow strait. So that from this side also, inhabitants may have passed into America; and the resemblance between the Indians of America and the eastern inhabitants of Asia, would induce us to conjecture, that the

former are the descendants of the latter, or the latter of the former; excepting indeed the Esquimaux, who, from the same circumstance of resemblance, and from identity of language, must be derived from the Greenlanders, and these probably from some of the northern parts of the old continent. A knowledge of their several languages would be the most certain evidence of their derivation which could be produced. In fact, it is the best proof of the affinity of nations which ever can be referred to. How many ages have elapsed since the English, the Dutch, the Germans, the Swiss, the Norwegians, Danes and Swedes have separated from their common stock? Yet how many more must elapse before the proofs of their common origin, which exist in their several languages, will disappear? It is to be lamented then, very much to be lamented, that we have suffered so many of the Indian tribes already to extinguish, without our having previously collected and deposited in the records of literature, the general rudiments at least of the languages they spoke. Were vocabularies formed of all the languages spoken in North and South America, preserving their appellations of the most common objects in nature, of those which must be present to every nation barbarous or civilized, with the inflections of their nouns and verbs, their principles of regimen and concord, and these deposited in all the public libraries, it would furnish opportunities to those skilled in the languages of the old world to

compare them with these, now, or at any future time, and hence to construct the best evidence of the derivation of this part of the human race.

But imperfect as is our knowledge of the tongues spoken in America, it suffices to discover the following remarkable fact: Arranging them under the radical ones to which they may be palpably traced, and doing the same by those of the red men of Asia, there will be found probably twenty in America, for one in Asia, of those radical languages, so called because if they were ever the same they have lost all resemblance to one another. A separation into dialects may be the work of a few ages only, but for two dialects to recede from one another till they have lost all vestiges of their common origin, must require an immense course of time; perhaps not less than many people give to the age of the earth. A greater number of those radical changes of language having taken place among the red men of America, proves them of greater antiquity than those of Asia.

I will now proceed to state the nations and numbers of the Aborigines which still exist in a respectable and independent form. And as their undefined boundaries would render it difficult to specify those only which may be within any certain limits, and it may not be unacceptable to present a more general view of them, I will reduce within the form of a catalogue all those within, and circumjacent to, the United States, whose names and numbers have come to my

notice. These are taken from four different lists, the first of which was given in the year 1759 to General Stanwix by George Croghan, deputy agent for Indian affairs under Sir William Johnson; the second was drawn up by a French trader of considerable note, resident among the Indians many years, and annexed to Colonel Bouquet's printed account of his expedition in 1764. The third was made out by Captain Hutchins, who visited most of the tribes, by order, for the purpose of learning their numbers, in 1768; and the fourth by John Dodge, an Indian trader, in 1779, except the numbers marked*—which are from other information.

| | Tribes. | Croghan. 1759. | Bouquet. 1764. | Hutchins. 1768. | Where they reside. |
|---|---|---|---|---|---|
| Northward and Westward of the United States. | Oswegatchies | ..... | ..... | 100 | At Swagatchy, on the river St. Laurence. |
| | Connasedagoes | ..... | ..... | 300 | Near Montreal. |
| | Cohunnewagoes | ..... | 200 | | |
| | Orondocs | ..... | ..... | 100 | Near Trois Rivieres. |
| | Abenakies | ..... | 350 | 150 | Near Trois Rivieres. |
| | Little Alkonkins | ..... | ..... | 100 | Near Trois Rivieres. |
| | Michmacs | ..... | 700 | ..... | River St. Laurence. |
| | Amelistes | ..... | 550 | ..... | River St. Laurence. |
| | Chalas | ..... | 130 | ..... | River St. Laurence. |
| | Nipissins | ..... | 400 | ..... | Towards the heads of the Ottawas river. |
| | Algonquins | ..... | 300 | ..... | Towards the heads of the Ottawas river. |
| | Round Heads | ..... | 2,500 | ..... | Riviere aux Tetes boules, on the east side of Lake Superior. |
| | Messasagues | ..... | 2,000 | ..... | Lakes Huron and Superior. |
| | Christianaux—Kris | ..... | 3,000 | ..... | Lake Christianaux. |
| | Assinaboes | ..... | 1,500 | ..... | Lake Assinaboes. |
| | Blancs, or Barbus | ..... | 1,500 | ..... | |
| | Sioux of the Meadows. | | 2,500 | | |
| | Sioux of the Woods... | 10,000 | 1,800 | 10,000 | On the heads of the Mississippi and westward of that river. |
| | Sioux | | ..... | | |
| | Ajoues | ..... | 1,100 | ..... | North of the Padoucas. |
| | Panis—White | ..... | 2,000 | ..... | South of the Missouri. |
| | Panis—Freckled | ..... | 1,709 | ..... | South of the Missouri. |
| | Padoucas | ..... | 500 | ..... | South of the Missouri. |
| | Grandes-Eaux | ..... | 1,000 | ..... | |
| | Canses | ..... | 1,600 | ..... | South of the Missouri. |
| | Osages | ..... | 600 | ..... | South of the Missouri. |
| | Missouris | 400 | 3,000 | ..... | On the river Missouri. |
| | Arkansas | ..... | 2,000 | ..... | On the river Arkansas. |
| | Caouitas | ..... | 700 | ..... | East of the Alibamous. |

| | Tribes. | Croghan. 1759. | Bouquet. 1764. | Hutchins. 1768. | Dodge. 1779. | Where they reside. |
|---|---|---|---|---|---|---|
| Within the limits of the United States. | Mohocks | | | 160 | 100 | Mohocks river. |
| | Onèidas | | | 300 | 400 | East side of Oneida Lake and head branches of Susquehanna. |
| | Tuscoròras | | | 200 | | Between the Oneidas and Onondagoes. |
| | Onondàgoes | | 1,550 | 260 | 230 | Near Onondago Lake. |
| | Cayùgas | | | 200 | 220 | On the Cayuga Lake, near the north branch of Susquehanna. |
| | Senecas | | | 1,000 | 650 | On the waters of Susquehanna, of Ontario, and the heads of the Ohio. |
| | Aughquàgahs | | | 150 | ..... | East branch of Susquehanna, and on Aughquagah. |
| | Nànticoes | | | 100 | ..... | Utsanango, Chaghnet, and Owegy, on the east branch of Susquehanna. |
| | Mohiccons | | | 100 | ..... | In the same parts. |
| | Conòies | | | 30 | ..... | In the same parts. |
| | Sapòonies | | | 30 | ..... | At Diahago and other villages up the north branch of Susquehanna. |
| | Mùnsies | | | 150 | *150 | At Diahago and other villages up the north branch of Susquehanna. |
| | Delawares, or Linnelinopies | | | 150 | *500 | At Diahago and other villages up the north branch of Susquehanna. |
| | Delawares, or Linnelinopies | 600 | 600 | 600 | | Between Ohio and Lake Erie and the branches of Beaver creek, Cayahoga and Muskingum. |
| | Shàwanees | 500 | 400 | 300 | 300 | Sioto and the branches of Muskingum. |
| | Mingoes | | | | 60 | On a branch of Sioto. |
| | Mohiccons | | | | *60 | |
| | Cohunnewagos | | | 300 | ..... | Near Sandusky. |
| | Wyandots | 300 | 300 | | 180 | |
| | Wyandots | | | 250 | | Near Fort St. Joseph's and Detroit. |
| | Twightwees | 300 | | 250 | ..... | Miami river near Fort Miami. |
| | Miamis | | 350 | | 300 | Miami river, about Fort St. Joseph. |
| | Ouiàtonons | 200 | 400 | 300 | *400 | On the banks of the Wabash, near Fort Ouiatonon. |
| | Piànkishas | 300 | 250 | 300 | *400 | On the banks of the Wabash, near Fort Ouiatonon. |

| | | | | | |
|---|---|---|---|---|---|
| Within the limits of the United States. | Shàkirs | ..... | ..... | 200 | ..... | On the banks of the Wabash, near Fort Ouiatonon. |
| | Kaskaskias | ..... | | 300 | ..... | Near Kaskaskia. |
| | Illinois | 400 | 600 | 300 | ..... | Near Cahokia. Query, If not the same with the Mitchigamis? |
| | Piorias | ..... | 800 | ..... | ..... | On the Illinois river, called Pianrias, but supposed to mean Piorias. |
| | Ponteòtamies | ..... | 350 | 300 | 450 | Near Fort St. Joseph's and Fort Detroit. |
| | Ottawa s | ..... | ..... | 550 | *300 | Near Fort St. Joseph's and Fort Detroit. |
| | Chìppawas | ..... | ..... | 200 | ..... | On Saguinam bay of Lake Huron. |
| | Ottawas | ..... | ..... | | ..... | On Saguinam bay of Lake Huron. |
| | Chìppawas | ..... | ..... | 400 | ..... | Near Michillimackinac. |
| | Ottawas | 2,000 | 5,900 | 250 | 5,450 | Near Michillimackinac. |
| | Chìppawas | ..... | | 400 | ..... | Near Fort St. Mary's on Lake Superior. |
| | Chìppawas | ..... | ..... | ..... | ..... | Several other villages along the banks of Lake Superior. Numbers unknown. |
| | Chìppawas | ..... | ..... | ..... | ..... | Near Puans bay on Lake Michigan. |
| | Shakies | 200 | 400 | 550 | ..... | Near Puans bay on Lake Michigan. |
| | Mynonàmies | ..... | ..... | ..... | ..... | Near Puans bay on Lake Michigan. |
| | Ouisconsings | ..... | 550 | ..... | ..... | Ouisconsing river. |
| | Kickapous | 600 | 300 | ..... | 250 | On Lake Michigan, and between that and the Mississippi. |
| | Otogamies—Foxes | ..... | ..... | ..... | ..... | |
| | Màscoutens | ..... | 500 | 4,000 | ..... | |
| | Miscòthins | ..... | ..... | | ..... | |
| | Outimacs | ..... | ..... | ..... | ..... | |
| | Musquakies | 200 | 250 | ..... | 250 | |
| | Sioux. Eastern | ..... | ..... | ..... | 500 | On the eastern heads of the Mississippi, and the islands of Lake Superior. |
| | | | | Galphin. 1678. | | |
| | Cherokees | 1,500 | 2,500 | 3,000 | ..... | Western parts of North Carolina. |
| | Chickasaws | ..... | 750 | 500 | ..... | Western parts of Georgia. |
| | Catawbas | ..... | 150 | ..... | ..... | On the Catawba river in South Carolina. |
| | Chacktaws | 2,000 | 4,500 | 6,000 | ..... | Western parts of Georgia. |
| | Upper Creeks | ..... | ..... | 3,000 | ..... | Western parts of Georgia. |
| | Lower Creeks | ..... | 1,180 | | ..... | |
| | Natchez | ..... | 150 | ..... | ..... | |
| | Alibamous | ..... | 600 | ..... | ..... | Alabama river, in the western parts of Georgia. |

The following tribes are also mentioned:

| | | | |
|---|---|---|---|
| Croghan's Catal. | Lezar | 400 | From the mouth of Ohio to the mouth of Wabash. |
| | Webings | 200 | On the Mississippi below the Shakies. |
| | Ousasoys, Grand Tuc. | 4,000 | On White Creek, a branch of the Mississippi. |
| | Linways | 1,000 | On the Mississippi. |
| Bouquet's. | Les Puans | 700 | Near Puans Bay. |
| | Folle Avoine | 350 | Near Puans Bay. |
| | Ouanakina | 300 | Conjectured to be tribes of the Creeks. |
| | Chiakanessou | 350 | |
| | Machecous | 800 | |
| | Souikilas | 200 | |
| Dodge's. | Minneamis | 2,000 | North-west of Lake Michigan, to the heads of Mississippi, and up to Lake Superior. |
| | Piankishas, Mascoutins, Vermillions | 800 | On and near the Wabash toward the Illinois. |

But apprehending these might be different appellations for some of the tribes already enumerated, I have not inserted them in the table, but state them separately as worthy of further inquiry. The variations observable in numbering the same tribe may sometimes be ascribed to imperfect information, and sometimes to a greater or less comprehension of settlements under the same name. See Appendix (7).

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## QUERY XII.

*A notice of the counties, cities, townships, and villages?*

The counties have been enumerated under Query IX. They are seventy-four in number, of very

unequal size and population. Of these thirty-five are on the tide waters, or in that parallel; twenty-three are in the midlands, between the tide waters and Blue Ridge of mountains; eight between the Blue Ridge and Alleghany; and eight westward of the Alleghany.

The State, by another division, is formed into parishes, many of which are commensurate with the counties; but sometimes a county comprehends more than one parish, and sometimes a parish more than one county. This division had relation to the religion of the State, a portion of the Anglican church, with a fixed salary, having been heretofore established in each parish. The care of the poor was another object of the parochial division.

We have no townships. Our country being much intersected with navigable waters, and trade brought generally to our doors, instead of our being obliged to go in quest of it, has probably been one of the causes why we have no towns of any consequence. Williamsburg, which, till the year 1780, was the seat of our government, never contained above 1,800 inhabitants; and Norfolk, the most populous town we ever had, contained but 6,000. Our towns, but more properly our villages and hamlets, are as follows:

On *James' River* and its waters, Norfolk, Portsmouth, Hampton, Suffolk, Smithfield, Williamsburg, Petersburg, Richmond, the seat of our government, Manchester, Charlottesville, New London.

On *York River* and its waters, York, Newcastle, Hanover.

On *Rappahannock*, Urbanna, Port-Royal, Fredericksburg, Falmouth.

On *Potomac* and its waters, Dumfries, Colchester, Alexandria, Winchester, Staunton.

On *Ohio*, Louisville.

There are other places at which, like some of the foregoing, the *laws* have said there shall be towns; but *nature* has said there shall not, and they remain unworthy of enumeration. *Norfolk* will probably be the emporium for all the trade of the Chesapeake bay and its waters; and a canal of eight or ten miles will bring to it all that of Albemarle sound and its waters. Secondary to this place, are the towns at the head of the tide waters, to wit, Petersburg on Appomattox; Richmond on James' river; Newcastle on York river; Alexandria on Potomac, and Baltimore on Patapsco. From these the distribution will be to subordinate situations in the country. Accidental circumstances, however, may control the indications of nature, and in no instance do they do it more frequently than in the rise and fall of towns.

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## QUERY XIII.

*The constitution of the State and its several charters?*

Queen Elizabeth by her letters patent, bearing date March 25, 1584, licensed Sir Walter Raleigh to

search for remote heathen lands, not inhabited by Christian people, and granted to him in fee simple, all the soil within two hundred leagues of the places where his people should, within six years, make their dwellings or abidings; reserving only to herself and her successors, their allegiance and one-fifth part of all the gold and silver ore they should obtain. Sir Walter immediately sent out two ships, which visited Wococon island in North Carolina, and the next year despatched seven with one hundred and seven men, who settled in Roanoke island, about latitude 35° 50′. Here Okisko, king of the Weopomeiocs, in a full council of his people is said to have acknowledged himself the homager of the Queen of England, and, after her, of Sir Walter Raleigh. A supply of fifty men were sent in 1586, and one hundred and fifty in 1587. With these last Sir Walter sent a governor, appointed him twelve assistants, gave them a charter of incorporation, and instructed them to settle on Chesapeake bay. They landed, however, at Hatorask. In 1588, when a fleet was ready to sail with a new supply of colonists and necessaries, they were detained by the Queen to assist against the Spanish armada. Sir Walter having now expended £40,000 in these enterprises, obstructed occasionally by the crown without a shilling of aid from it, was under a necessity of engaging others to adventure their money. He, therefore, by deed bearing date the 7th of March, 1589, by the name of Sir Walter Raleigh, Chief Governor

of Assamàcòmoc, (probably Acomàc,) alias Wingadacoia, alias Virginia, granted to Thomas Smith and others, in consideration of their adventuring certain sums of money, liberty to trade to this new country free from all customs and taxes for seven years, excepting the fifth part of the gold and silver ore to be obtained; and stipulated with them and the other assistants, then in Virginia, that he would confirm the deed of incorporation which he had given in 1587, with all the prerogatives, jurisdictions, royalties and privileges granted to him by the Queen. Sir Walter, at different times, sent five other adventurers hither, the last of which was in 1602; for in 1603 he was attainted and put into close imprisonment, which put an end to his cares over his infant colony. What was the particular fate of the colonists he had before sent and seated, has never been known; whether they were murdered, or incorporated with the savages.

Some gentlemen and merchants, supposing that by the attainder of Sir Walter Raleigh the grant to him was forfeited, not inquiring over carefully whether the sentence of an English court could affect lands not within the jurisdiction of that court, petitioned king James for a new grant of Virginia to them. He accordingly executed a grant to Sir Thomas Gates and others, bearing date the 9th of March, 1607, under which, in the same year, a settlement was effected at Jamestown, and ever after maintained. Of this grant, however, no particular

notice need be taken, as it was superseded by letters patent of the same king, of May 23, 1609, to the Earl of Salisbury and others, incorporating them by the name of "The Treasurer and company of Adventurers and Planters of the City of London for the first colony in Virginia," granting to them and their successors all the lands in Virginia from Point Comfort along the sea-coast, to the northward two hundred miles, and from the same point along the sea-coast to the southward two hundred miles, and all the space from this precinct on the sea-coast up into the land, west and north-west, from sea to sea, and the islands within one hundred miles of it, with all the communities, jurisdictions, royalties, privileges, franchises, and pre-eminencies, within the same, and thereto and thereabouts, by sea and land, appertaining in as ample manner as had before been granted to any adventurer; to be held of the king and his successors, in common soccage, yielding one-fifth part of the gold and silver ore to be therein found, for all manner of services; establishing a counsel in England for the direction of the enterprise, the members of which were to be chosen and displaced by the voice of the majority of the company and adventurers, and were to have the nomination and revocation of governors, officers, and ministers, which by them should be thought needful for the colony, the power of establishing laws and forms of government and magistracy, obligatory not only within the colony, but also on the

seas in going and coming to and from it; authorizing them to carry thither any persons who should consent to go, freeing them forever from all taxes and impositions on any goods or merchandise on importations into the colony, or exportation out of it, except the five per cent. due for custom on all goods imported into the British dominions, according to the ancient trade of merchants; which five per cent. only being paid they might, within thirteen months, re-export the same goods into foreign parts, without any custom, tax, or other duty, to the king or any of his officers, or deputies; with powers of waging war against those who should annoy them; giving to the inhabitants of the colony all the rights of natural subjects, as if born and abiding in England; and declaring that these letters should be construed, in all doubtful parts, in such manner as should be most for the benefit of the grantees.

Afterwards on the 12th of March, 1612, by other letters patent, the king added to his former grants, all islands in any part of the ocean between the 30th and 41st degrees of latitude, and within three hundred leagues of any of the parts before granted to the treasurer and company, not being possessed or inhabited by any other Christian prince or state, nor within the limits of the northern colony.

In pursuance of the authorities given to the company by these charters, and more especially of that part in the charter of 1609, which authorized them to establish a form of government, they on the 24th

of July, 1621, by charter under their common seal, declared that from thenceforward there should be two supreme councils in Virginia, the one to be called the council of state, to be placed and displaced by the treasurer, council in England, and company from time to time, whose office was to be that of assisting and advising the governor; the other to be called the general assembly, to be convened by the governor once yearly or oftener, which was to consist of the council of state, and two burgesses out of every town, hundred, or plantation, to be respectively chosen by the inhabitants. In this all matters were to be decided by the greater part of the votes present; reserving to the governor a negative voice; and they were to have power to treat, consult, and conclude all emergent occasions concerning the public weal, and to make laws for the behoof and government of the colony, imitating and following the laws and policy of England as nearly as might be; providing that these laws should have no force till ratified in a general court of the company in England, and returned under their common seal; and declaring that, after the government of the colony should be well framed and settled, no orders of the council in England should bind the colony unless ratified in the said general assembly. The king and company quarrelled, and by a mixture of law and force, the latter were ousted of all their rights without retribution, after having expended one hundred thousand pounds in establishing the colony, without the smallest aid

from government. King James suspended their powers by proclamation of July 15, 1624, and Charles I. took the government into his own hands. Both sides had their partisans in the colony, but, in truth, the people of the colony in general thought themselves little concerned in the dispute. There being three parties interested in these several charters, what passed between the first and second, it was thought could not affect the third. If the king seized on the powers of the company, they only passed into other hands, without increase or diminution, while the rights of the people remained as they were. But they did not remain so long. The northern parts of their country were granted away to the lords Baltimore and Fairfax; the first of these obtaining also the rights of separate jurisdiction and government. And in 1650 the parliament, considering itself as standing in the place of their deposed king, and as having succeeded to all his powers, without as well as within the realm, began to assume a right over the colonies, passing an act for inhibiting their trade with foreign nations. This succession to the exercise of kingly authority gave the first color for parliamentary interference with the colonies, and produced that fatal precedent which they continued to follow, after they had retired, in other respects, within their proper functions. When this colony, therefore, which still maintained its opposition to Cromwell and the parliament, was induced in 1651 to lay down their arms, they previously secured

their most essential rights by a solemn convention, which, having never seen in print, I will here insert literally from the records.

"ARTICLES agreed on and concluded at James Cittie in Virginia for the surrendering and settling of that plantation under the obedience and government of the commonwealth of England by the commissioners of the Councill of State by authoritie of the parliamt of England, and by the Grand assembly of the Governour, Councill, and Burgesses of that countrey.

"First it is agreed and consted that the plantation of Virginia, and all the inhabitants thereof, shall be and remain in due obedience and subjection to the Commonwealth of England, according to the laws there established, and that this submission and subscription bee acknowledged a voluntary act not forced nor constrained by a conquest upon the countrey, and that they shall have and enjoy such freedoms and priviledges as belong to the free borne people of England, and that the former government by the Commissions and Instructions be void and null.

"2ly. That the Grand assembly as formerly shall convene and transact the affairs of Virginia, wherein nothing is to be acted or done contrairie to the government of the Commonwealth of England and the lawes there established.

"3ly. That there shall be a full and totall remission and indempnitie of all acts, words, or writeings done or spoken against the parliament of England in relation to the same.

"4ly. That Virginia shall have and enjoy the antient bounds and lymitts granted by the charters of the former kings, and that we shall seek a new charter from the parliament to that purpose against any that have intrencht upon the rights thereof.

"5ly. That all the pattents of land granted under the colony seal by any of the precedent governours shall be and remaine in their full force and strength.

"6ly. That the priviledge of haveing ffiftie acres of land for every person transported in that collonie shall continue as formerly granted.

"7ly. That the people of Virginia have free trade as the people of England do enjoy to all places and with all nations according to the lawes of that commonwealth, and that Virginia shall enjoy all priviledges equall with any English plantations in America.

"8ly. That Virginia shall be free from all taxes, customs and impositions whatsoever, and none to be imposed on them without consent

of the Grand assembly; and soe that neither fforts nor castle bee erected or garrisons maintained without their consent.

"9ly. That noe charge shall be required from this country in respect of this present ffleet.

"10ly. That for the future settlement of the countrey in their due obedience, the engagement shall be tendred to all the inhabitants according to act of parliament made to that purpose, that all persons who shall refuse to subscribe the said engagement, shall have a yeare's time if they please to remove themselves and their estates out of Virginia, and in the meantime during the said yeare to have equall justice as formerly.

"11ly. That the use of the booke of common prayer shall be permitted for one yeare ensueinge with referrence to the consent of the major part of the parishes, provided that those which relate to kingshipp or that government be not used publiquely, and the continuance of ministers in their places, they not misdemeaning themselves, and the payment of their accustomed dues and agreements made with them respectively shall be left as they now stand dureing this ensueing yeare.

"12ly. That no man's cattell shall be questioned as the companies, unless such as have been entrusted with them or have disposed of them without order.

"13ly. That all ammunition, powder and armes, other than for private use, shall be delivered up, securitie being given to make satisfaction for it.

"14ly. That all goods allreadie brought hither by the Dutch or others which are now on shoar shall be free from surprizall.

"15ly. That the quittrents granted unto us by the late kinge for seaven yeares bee confirmed.

"16ly. That the commissioners for the parliament subscribeing these articles engage themselves and the honour of parliament for the full performance thereof; and that the present governour, and the councill, and the burgesses do likewise subscribe and engage the whole collony on their parts.

RICHARD BENNETT.—Seale.
WILLIAM CLAIBORNE.—Seale.
EDMOND CURTIS.—Seale.

"Theise articles were signed and sealed by the Commissioners of the Councill of state for the Commonwealth of England the twelveth day of March 1651."

Then follow the articles stipulated by the governor and council, which relate merely to their own persons and property, and then the ensuing instrument:

"An act of indempnitie made att the surrender of the countrey.

"Whereas, by the authoritie of the parliament wee the commissioners appointed by the councill of state authorized thereto, having brought a ffleet and force before James cittie in Virginia to reduce that collonie under the obedience of the commonwealth of England, and finding force raised by the Governour and countrey to make opposition against the said ffleet, whereby assured danger appearinge of the ruine and destruction of the plantation, for prevention whereof the burgesses of all the severall plantations being called to advise and assist therein, uppon long and serious debate, and in sad contemplation of the great miseries and certain destruction which were soe neerely hovering over the whole countrey; Wee the said Commissioners have thought fitt and condescending and granted to signe and confirme under our hands, seales and by our oath, Articles bearinge date with theise presents, and do further declare that by the authoritie of the parliament and commonwealth of England derived unto us their commissioners, that according to the articles in generall wee have granted an act of indempnitie and oblivion to all the inhabitants of this collonie from all words, actions, or writings that have been spoken acted or writt against the parliament or commonwealth of England or any other person from the beginning of the world to this daye. And this we have done that all the inhabitants of the collonie may live quietly and securely under the commonwealth of England. And we do promise that the parliament and commonwealth of England shall confirm and make good all those transactions of ours. Witness our hands and seales this 12th of March 1651.

RICHARD BENNETT.—Seale.
WILLIAM CLAIBORNE.—Seale.
EDMOND CURTIS.—Seale."

The colony supposed, that, by this solemn convention, entered into with arms in their hands, they had secured the ancient limits[1] of their country, its free trade,[2] its exemption from taxation[3] but by

[1] Art. 4. [2] Art. 7. [3] Art. 8.

their own assembly, and exclusion of military force[1] from among them. Yet in every of these points was this convention violated by subsequent kings and parliaments, and other infractions of their constitution, equally dangerous committed. Their general assembly, which was composed of the council of state and burgesses, sitting together and deciding by plurality of voices, was split into two houses, by which the council obtained a separate negative on their laws. Appeals from their supreme court, which had been fixed by law in their general assembly, were arbitrarily revoked to England, to be there heard before the king and council. Instead of four hundred miles on the seacoast, they were reduced, in the space of thirty years, to about one hundred miles. Their trade with foreigners was totally suppressed, and when carried to Great Britain, was there loaded with imposts. It is unnecessary, however, to glean up the several instances of injury, as scattered through American and British history, and the more especially as, by passing on to the accession of the present king, we shall find specimens of them all, aggravated, multiplied and crowded within a small compass of time, so as to evince a fixed design of considering our rights natural, conventional and chartered as mere nullities. The following is an epitome of the first sixteen years of his reign: The colonies were taxed internally and externally; their essential interests sacrificed to

[1] Art. 8.

individuals in Great Britain; their legislatures suspended; charters annulled; trials by juries taken away; their persons subjected to transportation across the Atlantic, and to trial before foreign judicatories; their supplications for redress thought beneath answer; themselves published as cowards in the councils of their mother country and courts of Europe; armed troops sent among them to enforce submission to these violences; and actual hostilities commenced against them. No alternative was presented but resistance, or unconditional submission. Between these could be no hesitation. They closed in the appeal to arms. They declared themselves independent states. They confederated together into one great republic; thus securing to every State the benefit of an union of their whole force. In each State separately a new form of government was established. Of ours particularly the following are the outlines: The executive powers are lodged in the hands of a governor, chosen annually, and incapable of acting more then three years in seven. He is assisted by a council of eight members. The judiciary powers are divided among several courts, as will be hereafter explained. Legislation is exercised by two houses of assembly, the one called the house of Delegates, composed of two members from each county, chosen annually by the citizens, possessing an estate for life in one hundred acres of uninhabited land, or twenty-five acres with a house on it, or in a house or lot in some town: the other

called the Senate, consisting of twenty-four members, chosen quadrenially by the same electors, who for this purpose are distributed into twenty-four districts. The concurrence of both houses is necessary to the passage of a law. They have the appointment of the governor and council, the judges of the superior courts, auditors, attorney-general, treasurer, register of the land office, and delegates to Congress. As the dismemberment of the State had never had its confirmation, but, on the contrary, had always been the subject of protestation and complaint, that it might never be in our own power to raise scruples on that subject, or to disturb the harmony of our new confederacy, the grants to Maryland, Pennsylvania, and the two Carolinas, were ratified.

This constitution was formed when we were new and unexperienced in the science of government. It was the first, too, which was formed in the whole United States. No wonder then that time and trial have discovered very capital defects in it.

1. The majority of the men in the State, who pay and fight for its support, are unrepresented in the legislature, the roll of freeholders entitled to vote not including generally the half of those on the roll of the militia, or of the tax-gatherers.

2. Among those who share the representation, the shares are very unequal. Thus the county of Warwick, with only one hundred fighting men, has an equal representation with the county of Loudon,

which has one thousand seven hundred and forty-six. So that every man in Warwick has as much influence in the government as seventeen men in Loudon. But lest it should be thought that an equal interspersion of small among large counties, through the whole State, may prevent any danger of injury to particular parts of it, we will divide it into districts, and show the proportions of land, of fighting men, and of representation in each:

| | Square Miles. | Fighting Men. | Delegates. | Senators. |
|---|---|---|---|---|
| Between the sea-coast and falls of the rivers | [1]11,205 | 19,012 | 71 | 12 |
| Between the falls of the rivers and Blue Ridge of mountains | 18,759 | 18,828 | 46 | 8 |
| Between the Blue Ridge and the Alleghany | 11,911 | 7,673 | 16 | 2 |
| Between the Alleghany and Ohio | [2]79,650 | 4,458 | 16 | 2 |
| Total | 121,525 | 49,971 | 149 | 24 |

An inspection of this table will supply the place of commentaries on it. It will appear at once that nineteen thousand men, living below the falls of the rivers, possess half the senate, and want four members only of possessing a majority of the house of delegates; a want more than supplied by the vicinity of their situation to the seat of government, and of course the greater degree of convenience and punctuality with which their members may and will

[1] Of these 542 are on the eastern shore.

[2] Of these, 22,616 are eastward of the meridian of the north of the Great Kanhaway.

attend in the legislature. These nineteen thousand, therefore, living in one part of the country, give law to upwards of thirty thousand living in another, and appoint all their chief officers, executive and judiciary. From the difference of their situation and circumstances, their interests will often be very different.

3. The senate is, by its constitution, too homogeneous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles. Thus in Great Britain it is said their constitution relies on the house of commons for honesty, and the lords for wisdom; which would be a rational reliance, if honesty were to be bought with money, and if wisdom were hereditary. In some of the American States, the delegates and senators are so chosen, as that the first represent the persons, and the second the property of the State. But with us, wealth and wisdom have equal chance for admission into both houses. We do not, therefore, derive from the separation of our legislature into two houses, those benefits which a proper complication of principles are capable of producing, and those which alone can compensate the evils which may be produced by their dissensions.

4. All the powers of government, legislative,

executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative, for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can it be effectual; because in that case they may put their proceedings into the form of an act

of assembly, which will render them obligatory on the other branches. They have, accordingly, in many instances, decided rights which should have been left to judiciary controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar. And this is done with no ill intention. The views of the present members are perfectly upright. When they are led out of their regular province, it is by art in others, and inadvertence in themselves. And this will probably be the case for some time to come. But it will not be a very long time. Mankind soon learn to make interested uses of every right and power which they possess, or may assume. The public money and public liberty, intended to have been deposited with three branches of magistracy, but found inadvertently to be in the hands of one only, will soon be discovered to be sources of wealth and dominion to those who hold them; distinguished, too, by this tempting circumstance, that they are the instrument, as well as the object of acquisition. With money we will get men, said Cæsar, and with men we will get money. Nor should our assembly be deluded by the integrity of their own purposes, and conclude that these unlimited powers will never be abused, because themselves are not disposed to abuse them. They should look forward to a time, and that not a distant one, when a corruption in this, as in the country from which we derive our origin, will have seized the heads of government,

and be spread by them through the body of the people; when they will purchase the voices of the people, and make them pay the price. Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes. The time to guard against corruption and tyranny, is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and claws after he shall have entered. To render these considerations the more cogent, we must observe in addition:

5. That the ordinary legislature may alter the constitution itself. On the discontinuance of assemblies, it became necessary to substitute in their place some other body, competent to the ordinary business of government, and to the calling forth the powers of the State for the maintenance of our opposition to Great Britain. Conventions were therefore introduced, consisting of two delegates from each county, meeting together and forming one house, on the plan of the former house of burgesses, to whose places they succeeded. These were at first chosen anew for every particular session. But in March 1775, they recommended to the people to choose a convention, which should continue in office a year. This was done, accordingly, in April 1775, and in the July following that convention passed an ordinance for the election of delegates in the month of April annually. It is well known, that in July 1775, a separation from Great Britain

and establishment of republican government, had never yet entered into any person's mind. A convention, therefore, chosen under that ordinance, cannot be said to have been chosen for the purposes which certainly did not exist in the minds of those who passed it. Under this ordinance, at the annual election in April 1776, a convention for the year was chosen. Independence, and the establishment of a new form of government, were not even yet the objects of the people at large. One extract from the pamphlet called Common Sense had appeared in the Virginia papers in February, and copies of the pamphlet itself had got in a few hands. But the idea had not been opened to the mass of the people in April, much less can it be said that they had made up their minds in its favor.

So that the electors of April 1776, no more than the legislators of July 1775, not thinking of independence and a permanent republic, could not mean to vest in these delegates powers of establishing them, or any authorities other than those of the ordinary legislature. So far as a temporary organization of government was necessary to render our opposition energetic, so far their organization was valid. But they received in their creation no powers but what were given to every legislature before and since. They could not, therefore, pass an act transcendent to the powers of other legislatures. If the present assembly pass an act, and declare it shall be irrevocable by subsequent assemblies, the decla-

ration is merely void, and the act repealable, as other acts are. So far, and no farther authorized, they organized the government by the ordinance entitled a constitution or form of government. It pretends to no higher authority than the other ordinances of the same session; it does not say that it shall be perpetual; that it shall be unalterable by other legislatures; that it shall be transcendent above the powers of those who they knew would have equal power with themselves. Not only the silence of the instrument is a proof they thought it would be alterable, but their own practice also; for this very convention, meeting as a house of delegates in general assembly with the Senate in the autumn of that year, passed acts of assembly in contradiction to their ordinance of government; and every assembly from that time to this has done the same. I am safe, therefore, in the position that the constitution itself is alterable by the ordinary legislature. Though this opinion seems founded on the first elements of common sense, yet is the contrary maintained by some persons. 1. Because, say they, the conventions were vested with every power necessary to make effectual opposition to Great Britain. But to complete this argument, they must go on, and say further, that effectual opposition could not be made to Great Britain without establishing a form of government perpetual and unalterable by the legislature; which is not true. An opposition which at some time or other was to come to an end, could

not need a perpetual institution to carry it on; and a government amendable as its defects should be discovered, was as likely to make effectual resistance, as one that should be unalterably wrong. Besides, the assemblies were as much vested with all powers requisite for resistance as the conventions were. If, therefore, these powers included that of modelling the form of government in the one case, they did so in the other. The assemblies then as well as the conventions may model the government; that is, they may alter the ordinance of government. 2. They urge, that if the convention had meant that this instrument should be alterable, as their other ordinances were, they would have called it an ordinance; but they have called it a *constitution*, which, *ex vi termini*, means "an act above the power of the ordinary legislature." I answer that *constitutio*, *constitutium*, *statutum*, *lex*, are convertible terms. "*Constitutio* dicitur jus quod a principe conditure." "*Constitutium*, quod ab imperatoribus rescriptum statutumve est." "*Statutum*, idem quod lex." Calvini Lexicon juridicum. *Constitution* and *statute* were originally terms of the[1] civil law, and from thence introduced by ecclesiastics into the English law. Thus in the statute 25 Hen. VIII. c. 19, § 1, "*Constitutions* and *ordinances*" are used as synonymous. The term *constitution* has many other significations in physics and politics; but in jurispru-

[1] To bid, to set, was the ancient legislative word of the English. Ll. Hlotharri and Eadrici. Ll. Inæ. Ll. Eadwerdi. Ll. Aathelstani.

dence, whenever it is applied to any act of the legislature, it invariably means a statute, law, or ordinance which is the present case. No inference then of a different meaning can be drawn from the adoption of this title; on the contrary, we might conclude that, by their affixing to it a term synonymous with ordinance or statute. But of what consequence is their meaning, where their power is denied? If they meant to do more than they had power to do, did this give them power? It is not the name, but the authority that renders an act obligatory. Lord Coke says, "an article of the statute, 11 R. II. c. 5, that no person should attempt to revoke any ordinance then made, is repealed, for that such restraints is against the jurisdiction and power of the parliament." 4. Inst. 42. And again, "though divers parliaments have attempted to restrain subsequent parliaments, yet could they never effect it; for the latter parliament hath ever power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalty, in the former; for it is a maxim in the laws of the parliament, *quod leges posteriores priores contrarias abrogant.*" 4. Inst. 43. To get rid of the magic supposed to be in the word *constitution*, let us translate it into its definition as given by those who think it above the power of the law; and let us suppose the convention, instead of saying, "We the ordinary legislature, establish a *constitution*,"

had said, "We the ordinary legislature, establish an act *above the power of the ordinary legislature*." Does not this expose the absurdity of the attempt? 3. But, say they, the people have acquiesced, and this has given it an authority superior to the laws. It is true that the people did not rebel against it; and was that a time for the people to rise in rebellion? Should a prudent acquiescence, at a critical time, be construed into a confirmation of every illegal thing done during that period? Besides, why should they rebel? At an annual election they had chosen delegates for the year, to exercise the ordinary powers of legislation, and to manage the great contest in which they were engaged. These delegates thought the contest would be best managed by an organized government. They therefore, among others, passed an ordinance of government. They did not presume to call it perpetual and unalterable. They well knew they had no power to make it so; that our choice of them had been for no such purpose, and at a time when we could have no such purpose in contemplation. Had an unalterable form of government been meditated, perhaps we should have chosen a different set of people. There was no cause then for the people to rise in rebellion. But to what dangerous lengths will this argument lead? Did the acquiescence of the colonies under the various acts of power exercised by Great Britain in our infant State, confirm these acts, and so far invest them with the authority of the people as to render

them unalterable, and our present resistance wrong? On every unauthoritative exercise of power by the legislature must the people rise in rebellion, or their silence be construed into a surrender of that power to them? If so, how many rebellions should we have had already? One certainly for every session of assembly. The other States in the union have been of opinion that to render a form of government unalterable by ordinary acts of assembly, the people must delegate persons with special powers. They have accordingly chosen special conventions to form and fix their governments. The individuals then who maintain the contrary opinion in this country, should have the modesty to suppose it possible that they may be wrong, and the rest of America right. But if there be only a possibility of their being wrong, if only a plausible doubt remains of the validity of the ordinance of government, is it not better to remove that doubt by placing it on a bottom which none will dispute? If they be right we shall only have the unnecessary trouble of meeting once in convention. If they be wrong, they expose us to the hazard of having no fundamental rights at all. True it is, this is no time for deliberating on forms of government. While an enemy is within our bowels, the first object is to expel him. But when this shall be done, when peace shall be established, and leisure given us for intrenching within good forms, the rights for which we have bled, let no man be found indolent enough

to decline a little more trouble for placing them beyond the reach of question. If anything more be requisite to produce a conviction of the expediency of calling a convention at a proper season to fix our form of government, let it be the reflection:

6. That the assembly exercises a power of determining the quorum of their own body which may legislate for us. After the establishment of the new form they adhered to the *Lex majoris partis*, founded in common law[1] as well as common right. It is the natural law[2] of every assembly of men, whose numbers are not fixed by any other law. They continued for some time to require the presence of a majority of their whole number, to pass an act. But the British parliament fixes its own quorum; our former assemblies fixed their own quorum; and one precedent in favor of power is stronger than an hundred against it. The house of delegates, therefore, have lately[3] voted that, during the present dangerous invasion, forty members shall be a house to proceed to business. They have been moved to this by the fear of not being able to collect a house. But this danger could not authorize them to call that a house which was none; and if they may fix it at one number, they may at another, till it loses its fundamental character of being a representative body. As this vote expires with the present inva-

[1] Bro. abr. Corporations, 31, 34. Hakewell, 93.
[2] Puff. Off. hom. l. 2, c. 6, § 12.
[3] June 4, 1781.

sion, it is probable the former rule will be permitted to revive; because at present no ill is meant. The power, however, of fixing their own quorum has been avowed, and a precedent set. From forty it may be reduced to four, and from four to one; from a house to a committee, from a committee to a chairman or speaker, and thus an oligarchy or monarchy be substituted under forms supposed to be regular. "Omnia mala exempla ex bonis orta sunt; sed ubi imperium ad ignaros aut minus bonos pervenit, novum illud exemplum ab dignis et idoneis adindignos et non idoneos fertur." When, therefore, it is considered, that there is no legal obstacle to the assumption by the assembly of all the powers legislative, executive, and judiciary, and that these may come to the hands of the smallest rag of delegation, surely the people will say, and their representatives, while yet they have honest representatives, will advise them to say, that they will not acknowledge as laws any acts not considered and assented to by the major part of their delegates.

In enumerating the defects of the Constitution, it would be wrong to count among them what is only the error of particular persons. In December 1776, our circumstances being much distressed, it was proposed in the house of delegates to create a *dictator*, invested with every power legislative, executive, and judiciary, civil and military, of life and of death, over our persons and over our properties; and in June 1781, again under calamity, the same

proposition was repeated, and wanted a few votes only of being passed. One who entered into this contest from a pure love of liberty, and a sense of injured rights, who determined to make every sacrifice, and to meet every danger, for the re-establishment of those rights on a firm basis, who did not mean to expend his blood and substance for the wretched purpose of changing this matter for that, but to place the powers of governing him in a plurality of hands of his own choice, so that the corrupt will of no one man might in future oppress him, must stand confounded and dismayed when he is told, that a considerable portion of that plurality had mediated the surrender of them into a single hand, and, in lieu of a limited monarchy, to deliver him over to a despotic one! How must we find his efforts and sacrifices abused and baffled, if he may still, by a single vote, be laid prostrate at the feet of one man! In God's name, from whence have they derived this power? Is it from our ancient laws? None such can be produced. Is it from any principle in our new Constitution expressed or implied? Every lineament expressed or implied, is in full opposition to it. Its fundamental principle is, that the State shall be governed as a commonwealth. It provides a republican organization, proscribes under the name of *prerogative* the exercise of all powers undefined by the laws; places on this basis the whole system of our laws; and by consolidating them together, chooses that they should be left to stand or

fall together, never providing for any circumstances, nor admitting that such could arise, wherein either should be suspended; no, not for a moment. Our ancient laws expressly declare, that those who are but delegates themselves shall not delegate to others powers which require judgment and integrity in their exercise. Or was this proposition moved on a supposed right in the movers, of abandoning their posts in a moment of distress? The same laws forbid the abandonment of that post, even on ordinary occasions; and much more a transfer of their powers into other hands and other forms, without consulting the people. They never admit the idea that these, like sheep or cattle, may be given from hand to hand without an appeal to their own will. Was it from the necessity of the case? Necessities which dissolve a government, do not convey its authority to an oligarchy or a monarchy. They throw back, into the hands of the people, the powers they had delegated, and leave them as individuals to shift for themselves. A leader may offer, but not impose himself, nor be imposed on them. Much less can their necks be submitted to his sword, their breath to be held at his will or caprice. The necessity which should operate these tremendous effects should at least be palpable and irresistible. Yet in both instances, where it was feared, or pretended with us, it was belied by the event. It was belied, too, by the preceding experience of our sister States, several of whom had grappled through greater difficulties

without abandoning their forms of government. When the proposition was first made, Massachusetts had found even the government of committees sufficient to carry them through an invasion. But we at the time of that proposition, were under no invasion. When the second was made, there had been added to this example those of Rhode Island, New York, New Jersey, and Pennsylvania, in all of which the republican form had been found equal to the task of carrying them through the severest trials. In this State alone did there exist so little virtue, that fear was to be fixed in the hearts of the people, and to become the motive of their exertions, and principle of their government? The very thought alone was treason against the people; was treason against mankind in general; as riveting forever the chains which bow down their necks, by giving to their oppressors a proof, which they would have trumpeted through the universe, of the imbecility of republican government, in times of pressing danger, to shield them from harm. Those who assume the right of giving away the reins of government in any case, must be sure that the herd, whom they hand on to the rods and hatchet of the dictator, will lay their necks on the block when the shall nod to them. But if our assemblies supposed such a recognition in the people, I hope they mistook their character. I am of opinion, that the government, instead of being braced and invigorated for greater exertions under their difficulties, would have been thrown back upon

the bungling machinery of county committees for administration, till a convention could have been called, and its wheels again set into regular motion. What a cruel moment was this for creating such an embarrassment, for putting to the proof the attachment of our countrymen to republican government! Those who meant well, of the advocates of this measure, (and most of them meant well, for I know them personally, had been their fellow-laborer in the common cause, and had often proved the purity of their principles,) had been seduced in their judgment by the example of an ancient republic, whose constitution and circumstances were fundamentally different. They had sought this precedent in the history of Rome, where alone it was to be found, and where at length, too, it had proved fatal. They had taken it from a republic rent by the most bitter factions and tumults, where the government was of a heavy-handed unfeeling aristocracy, over a people ferocious, and rendered desperate by poverty and wretchedness; tumults which could not be allayed under the most trying circumstances, but by the omnipotent hand of a single despot. Their constitution, therefore, allowed a temporary tyrant to be erected, under the name of a dictator; and that temporary tyrant, after a few examples, became perpetual. They misapplied this precedent to a people mild in their dispositions, patient under their trial, united for the public liberty, and affectionate to their leaders. But if from the constitution of the Roman government there

resulted to their senate a power of submitting all their rights to the will of one man, does it follow that the assembly of Virginia have the same authority? What clause in our constitution has substituted that of Rome, by way of residuary provision, for all cases not otherwise provided for? Or if they may step *ad libitum* into any other form of government for precedents to rule us by, for what oppression may not a precedent be found in this world of the *ballum omnium in omnia?* Searching for the foundations of this proposition, I can find none which may pretend a color of right or reason, but the defect before developed, that there being no barrier between the legislative, executive, and judiciary departments, the legislature may seize the whole; that having seized it, and possessing a right to fix their own quorum, they may reduce that quorum to one, whom they may call a chairman, speaker, dictator, or by any other name they please. Our situation is indeed perilous, and I hope my countrymen will be sensible of it, and will apply, at a proper season, the proper remedy; which is a convention to fix the constitution, to amend its defects, to bind up the several branches of government by certain laws, which, when they transgress, their acts shall become nullities; to render unnecessary an appeal to the people, or in other words a rebellion, on every infraction of their rights, on the peril that their acquiescence shall be construed into an intention to surrender those rights.

## QUERY XIV.

*The administration of justice and the description of the laws?*

The State is divided into counties. In every county are appointed magistrates, called justices of the peace, usually from eight to thirty or forty in number, in proportion to the size of the county, of the most discreet and honest inhabitants. They are nominated by their fellows, but commissioned by the governor, and act without reward. These magistrates have jurisdiction both criminal and civil. If the question before them be a question of law only, they decide on it themselves; but if it be of fact, or of fact and law combined, it must be referred to a jury. In the latter case, of a combination of law and fact, it is usual for the jurors to decide the fact, and to refer the law arising on it to the decision of the judges. But this division of the subject lies with their discretion only. And if the question relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact. If they be mistaken, a decision against right, which is casual only, is less dangerous to the State, and less afflicting to the loser, than one which makes part of a regular and uniform system. In truth, it is better to toss up cross and pile in a cause, than to refer it to a judge whose mind is warped by any motive whatever, in that particular case. But

the common sense of twelve honest men gives still a better chance of just decision, than the hazard of cross and pile. These judges execute their process by the sheriff or coroner of the county, or by constables of their own appointment. If any free person commit an offence against the commonwealth, if it be below the degree of felony, he is bound by a justice to appear before their court, to answer it on an indictment or information. If it amount to felony, he is committed to jail; a court of these justices is called; if they on examination think him guilty, they send him to the jail of the general court, before which court he is to be tried first by a grand jury of twenty-four, of whom thirteen must concur in opinion; if they find him guilty, he is then tried by a jury of twelve men of the county where the offence was committed, and by their verdict, which must be unanimous, he is acquitted or condemned without appeal. If the criminal be a slave, the trial by the county court is final. In every case, however, except that of high treason, there resides in the governor a power of pardon. In high treason the pardon can only flow from the general assembly. In civil matters these justices have jurisdiction in all cases of whatever value, not appertaining to the department of the admiralty. This jurisdiction is twofold. If the matter in dispute be of less value than four dollars and one-sixth, a single member may try it at any time and place within his county, and may award execution on the goods of the party cast: If

it be of that or greater value, it is determinable before the county court, which consists of four at the least of those justices and assembles at the court-house of the county on a certain day in every month. From their determination, if the matter be of the value of ten pounds sterling, or concern the title or bounds of lands, an appeal lies to one of the superior courts.

There are three or four superior courts, to wit, the high court of chancery, the general court, and the court of admiralty. The first and second of these receive appeals from the county courts, and also have original jurisdiction, where the subject of controversy is of the value of ten pounds sterling, or where it concerns the title bounds or lands. The jurisdiction of the admiralty is original altogether. The high court of chancery is composed of three judges, the general court of five, and the court of admiralty of three. The two first hold their sessions at Richmond at stated times, the chancery twice in the year, and the general court twice for business, civil and criminal, and twice more for criminal only. The court of admiralty sits at Williamsburg whenever a controversy arises.

There is one supreme court, called the court of appeals, composed of the judges of the three superior courts, assembling twice a year at stated times at Richmond. This court receives appeals in all civil cases from each of the superior courts, and determines them finally. But it has no original jurisdiction.

If a controversy arise between two foreigners of a nation in alliance with the United States, it is decided by the Consul for their State, or, if both parties choose it, by the ordinary courts of justice. If one of the parties only be such a foreigner, it is triable before the courts of justice of the country. But if it shall have been instituted in a county court, the foreigner may remove it into the general court, or court of chancery, who are to determine it at their first sessions, as they must also do if it be originally commenced before them. In cases of life and death, such foreigners have a right to be tried by a jury, the one-half foreigners, the other natives.

All public accounts are settled with a board of auditors, consisting of three members appointed by the general assembly, any two of whom may act. But an individual, dissatisfied with the determination of that board, may carry his case into the proper superior court.

A description of the laws.

The general assembly was constituted, as has been already shown, by letters-patent of March the 9th, 1607, in the fourth year of the reign of James the first. The laws of England seem to have been adopted by consent of the settlers, which might easily enough be done whilst they were few and living all together. Of such adoption, however, we have no other proof than their practice till the year 1661, when they were expressly adopted by an act of the assembly, except so far as "a difference of con-

dition" rendered them inapplicable. Under this adoption, the rule, in our courts of judicature was, that the common law of England, and the general statutes previous to the fourth of James, were in force here; but that no subsequent statutes were, *unless we were named in them*, said the judges and other partisans of the crown, but *named or not named*, said those who reflected freely. It will be unnecessary to attempt a description of the laws of England, as that may be found in English publications. To those which were established here, by the adoption of the legislature, have been since added a number of acts of assembly passed during the monarchy, and ordinances of convention and acts of assembly enacted since the establishment of the republic. The following variations from the British model are perhaps worthy of being specified:

Debtors unable to pay their debts, and making faithful delivery of their whole effects, are released from confinement, and their persons forever discharged from restraint for such previous debts; but any property they may afterwards acquire will be subject to their creditors.

The poor unable to support themselves, are maintained by an assessment on the tytheable persons in their parish. This assessment is levied and administered by twelve persons in each parish, called vestrymen, originally chosen by the housekeepers of the parish, but afterwards filling vacancies in their own body by their own choice. These are usually

the most discreet farmers, so distributed through their parish, that every part of it may be under the immediate eye of some one of them. They are well acquainted with the details and economy of private life, and they find sufficient inducements to execute their charge well, in their philanthropy, in the approbation of their neighbors, and the distinction which that gives them. The poor who have neither property, friends, nor strength to labor, are boarded in the houses of good farmers, to whom a stipulated sum is annually paid. To those who are able to help themselves a little, or have friends from whom they derive some succors, inadequate however to their full maintenance, supplementary aids are given which enable them to live comfortably in their own houses, or in the houses of their friends. Vagabonds without visible property or vocation, are placed in work houses, where they are well clothed, fed, lodged, and made to labor. Nearly the same method of providing for the poor prevails through all our States; and from Savannah to Portsmouth you will seldom meet a beggar. In the large towns, indeed, they sometimes present themselves. These are usually foreigners, who have never obtained a settlement in any parish. I never yet saw a native American begging in the streets or highways. A subsistence is easily gained here; and if, by misfortunes, they are thrown on the charities of the world, those provided by their own country are so comfortable and so certain, that they never think of

relinquishing them to become strolling beggars. Their situation too, when sick, in the family of a good farmer, where every member is emulous to do them kind offices, where they are visited by all the neighbors, who bring them the little rarities which their sickly appetites may crave, and who take by rotation the nightly watch over them, when their condition requires it, is without comparison better than in a general hospital, where the sick, the dying and the dead are crammed together in the same rooms, and often in the same beds. The disadvantages, inseparable from general hospitals, are such as can never be counterpoised by all the regularities of medicine and regimen. Nature and kind nursing save a much greater proportion in our plain way, at a smaller expense, and with less abuse. One branch only of hospital institution is wanting with us; that is, a general establishment for those laboring under difficult cases of chirurgery. The aids of this art are not equivocal. But an able chirurgeon cannot be had in every parish. Such a receptacle should therefore be provided for those patients; but no others should be admitted.

Marriages must be solemnized either on special license, granted by the first magistrate of the county, on proof of the consent of the parent or guardian of either party under age, or after solemn publication, on three several Sundays, at some place of religious worship, in the parishes where the parties reside. The act of solemnization may be by the

minister of any society of Christians, who shall have been previously licensed for this purpose by the court of the county. Quakers and Menonists, however, are exempted from all these conditions, and marriage among them is to be solemnized by the society itself.

A foreigner of any nation, not in open war with us, becomes naturalized by removing to the State to reside, and taking an oath of fidelity; and thereupon acquires every right of a native citizen; and citizens may divest themselves of that character, by declaring, by solemn deed, or in open court, that they mean to expatriate themselves, and no longer to be citizens of this State.

Conveyances of land must be registered in the court of the county wherein they lie, or in the general court, or they are void, as to creditors, and subsequent purchasers.

Slaves pass by descent and dower as lands do. Where the descent is from a parent, the heir is bound to pay an equal share of their value in money to each of their brothers and sisters.

Slaves, as well as lands, were entailable during the monarchy; but, by an act of the first republican assembly, all donees in tail, present and future, were vested with the absolute dominion of the entailed subject.

Bills of exchange, being protested, carry ten per cent. interest from their date.

No person is allowed, in any other case, to take

more than five per cent. per annum simple interest for the loan of moneys.

Gaming debts are made void, and moneys actually paid to discharge such debts (if they exceed forty shillings) may be recovered by the payer within three months, or by any other person afterwards.

Tobacco, flour, beef, pork, tar, pitch, and turpentine must be inspected by persons publicly appointed, before they can be exported.

The erecting iron-works and mills is encouraged by many privileges; with necessary cautions however to prevent their dams from obstructing the navigation of the water-courses. The general assembly have on several occasions shown a great desire to encourage the opening the great falls of James and Potomac rivers. As yet, however, neither of these have been effected.

The laws have also descended to the preservation and improvement of the races of useful animals, such as horses, cattle, deer; to the extirpation of those which are noxious, as wolves, squirrels, crows, blackbirds; and to the guarding our citizens against infectious disorders, by obliging suspected vessels coming into the State, to perform quarantine, and by regulating the conduct of persons having such disorders within the State.

The mode of acquiring lands, in the earliest times of our settlement, was by petition to the general assembly. If the lands prayed for were already cleared of the Indian title, and the assembly thought

the prayer reasonable, they passed the property by their vote to the petitioner. But if they had not yet been ceded by the Indians, it was necessary that the petitioner should previously purchase their right. This purchase the assembly verified, by inquiries of the Indian proprietors; and being satisfied of its reality and fairness, proceeded further to examine the reasonableness of the petition, and its consistence with policy; and according to the result, either granted or rejected the petition. The company also sometimes, though very rarely, granted lands, independently of the general assembly. As the colony increased, and individual applications for land multiplied, it was found to give too much occupation to the general assembly to inquire into and execute the grant in every special case. They therefore thought it better to establish general rules, according to which all grants should be made, and to leave to the governor the execution of them, under these rules. This they did by what have been usually called the land laws, amending them from time to time, as their defects were developed. According to these laws, when an individual wished a portion of unappropriated land, he was to locate and survey it by a public officer, appointed for that purpose; its breadth was to bear a certain proportion to its length: the grant was to be executed by the governor; and the lands were to be improved in a certain manner, within a given time. From these regulations there resulted to the State a sole

and exclusive power of taking conveyances of the Indian right of soil; since, according to them an Indian conveyance alone could give no right to an individual, which the laws would acknowledge. The State, or the crown, thereafter, made general purchases of the Indians from time to time, and the governor parcelled them out by special grants, conformable to the rules before described, which it was not in his power, or in that of the crown, to dispense with. Grants, unaccompanied by their proper legal circumstances, were set aside regularly by *fieri facias*, or by bill in chancery. Since the establishment of our new Government, this order of things is but little changed. An individual, wishing to appropriate to himself lands still unappropriated by any other, pays to the public treasurer a sum of money proportioned to the quantity he wants. He carries the treasurer's receipt to the auditors of public accounts, who thereupon debit the treasurer with the sum, and order the register of the land-office to give the party a warrant for his land. With this warrant from the register, he goes to the surveyor of the county where the land lies on which he has cast his eye. The surveyor lays it off for him, gives him its exact description, in the form of a certificate, which certificate he returns to the land-office, where a grant is made out, and is signed by the governor. This vests in him a perfect dominion in his lands, transmissible to whom he pleases by deed or will, or by descent to his heirs, if he die intestate.

Many of the laws which were in force during the monarchy being relative merely to that form of government, or inculcating principles inconsistent with republicanism, the first assembly which met after the establishment of the commonwealth appointed a committee to revise the whole code, to reduce it into proper form and volume, and report it to the assembly. This work has been executed by three gentlemen, and reported; but probably will not be taken up till a restoration of peace shall leave to the legislature leisure to go through such a work.

The plan of the revisal was this. The common law of England, by which is meant, that part of the English law which was anterior to the date of the oldest statutes extant, is made the basis of the work. It was thought dangerous to attempt to reduce it to a text; it was therefore left to be collected from the usual monuments of it. Necessary alterations in that, and so much of the whole body of the British statutes, and of acts of assembly, as were thought proper to be retained, were digested into one hundred and twenty-six new acts, in which simplicity of style was aimed at, as far as was safe. The following are the most remarkable alterations proposed:

To change the rules of descent, so as that the lands of any person dying intestate shall be divisible equally among all his children, or other representatives, in equal degree.

To make slaves distributable among the next of kin, as other movables.

To have all public expenses, whether of the general treasury, or of a parish or county, (as for the maintenance of the poor, building bridges, courthouses, &c.,) supplied by assessment on the citizens, in proportion to their property.

To hire undertakers for keeping the public roads in repair, and indemnify individuals through whose lands new roads shall be opened.

To define with precision the rules whereby aliens should become citizens, and citizens make themselves aliens.

To establish religious freedom on the broadest bottom.

To emancipate all slaves born after the passing the act. The bill reported by the revisers does not itself contain this proposition; but an amendment containing it was prepared, to be offered to the legislature whenever the bill should be taken up, and farther directing, that they should continue with their parents to a certain age, then to be brought up, at the public expense, to tillage, arts, or sciences, according to their geniuses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such place as the circumstances of the time should render most proper, sending them out with arms, implements of household and of the handicraft arts, seeds, pairs of the useful domestic animals, &c., to declare them a free and independent people, and extend to them our alliance and protection, till they have acquired

strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce them to migrate hither proper encouragements were to be proposed. It will probably be asked, Why not retain and incorporate the blacks into the State, and thus save the expense of supplying by importation of white settlers, the vacancies they will leave? Deep-rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions, which will probably never end but in the extermination of the one or the other race. To these objections, which are political, may be added others, which are physical and moral. The first difference which strikes us is that of color. Whether the black of the negro resides in the reticular membrane between the skin and scarf-skin, or in the scarf-skin itself; whether it proceeds from the color of the blood, the color of the bile, or from that of some other secretion, the difference is fixed in nature, and is as real as if its seat and cause were better known to us. And is this difference of no importance? Is it not the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or less suffusions of color in the one, preferable to that eternal monotony, which reigns in the

countenances, that immovable veil of black which covers the emotions of the other race? Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favor of the whites, declared by their preference of them, as uniformly as is the preference of the Oran-ûtan for the black woman over those of his own species. The circumstance of superior beauty, is thought worthy attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man? Besides those of color, figure, and hair, there are other physical distinctions proving a difference of race. They have less hair on the face and body. They secrete less by the kidneys, and more by the glands of the skin, which gives them a very strong and disagreeable odor. This greater degree of transpiration, renders them more tolerant of heat, and less so of cold than the whites. Perhaps, too, a difference of structure in the pulmonary apparatus, which a late ingenious experimentalist[1] has discovered to be the principal regulator of animal heat, may have disabled them from extricating, in the act of inspiration, so much of that fluid from the outer air, or obliged them in expiration, to part with more of it. They seem to require less sleep. A black after hard labor through the day, will be induced by the slightest amusements to sit up till midnight, or later, though knowing he must be out with the first dawn of the morning. They are at least as brave, and more adventuresome.

[1] Crawford.

But this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present. When present, they do not go through it with more coolness or steadiness than the whites. They are more ardent after their female; but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation. Their griefs are transient. Those numberless afflictions, which render it doubtful whether heaven has given life to us in mercy or in wrath, are less felt, and sooner forgotten with them. In general, their existence appears to participate more of sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions, and unemployed in labor. An animal whose body is at rest, and who does not reflect must be disposed to sleep of course. Comparing them by their faculties of memory, reason, and imagination, it appears to me that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous. It would be unfair to follow them to Africa for this investigation. We will consider them here, on the same stage with the whites, and where the facts are not apocryphal on which a judgment is to be formed. It will be right to make great allowances for the difference of condition, of education, of conversation, of the sphere in which they move.

Many millions of them have been brought to, and born in America. Most of them, indeed, have been confined to tillage, to their own homes, and their own society; yet many have been so situated, that they might have availed themselves of the conversation of their masters; many have been brought up to the handicraft arts, and from that circumstance have always been associated with the whites. Some have been liberally educated, and all have lived in countries where the arts and sciences are cultivated to a considerable degree, and all have had before their eyes samples of the best works from abroad. The Indians, with no advantages of this kind, will often carve figures on their pipes not destitute of design and merit. They will crayon out an animal, a plant, or a country, so as to prove the existence of a germ in their minds which only wants cultivation. They astonish you with strokes of the most sublime oratory; such as prove their reason and sentiment strong, their imagination glowing and elevated. But never yet could I find that a black had uttered a thought above the level of plain narration; never saw even an elementary trait of painting or sculpture. In music they are more generally gifted than the whites with accurate ears for tune and time, and they have been found capable of imagining a small catch.[1] Whether they will be

[1] The instrument proper to them is the Banjar, which they brought hither from Africa, and which is the original of the guitar, its chords being precisely the four lower chords of the guitar.

equal to the composition of a more extensive run of melody, or of complicated harmony, is yet to be proved. Misery is often the parent of the most affecting touches in poetry. Among the blacks is misery enough, God knows, but no poetry. Love is the peculiar œstrum of the poet. Their love is ardent, but it kindles the senses only, not the imagination. Religion, indeed, has produced a Phyllis Whately; but it could not produce a poet. The compositions published under her name are below the dignity of criticism. The heroes of the Dunciad are to her, as Hercules to the author of that poem. Ignatius Sancho has approached nearer to merit in composition; yet his letters do more honor to the heart than the head. They breathe the purest effusions of friendship and general philanthropy, and show how great a degree of the latter may be compounded with strong religious zeal. He is often happy in the turn of his compliments, and his style is easy and familiar, except when he affects a Shandean fabrication of words. But his imagination is wild and extravagant, escapes incessantly from every restraint of reason and taste, and, in the course of its vagaries, leaves a tract of thought as incoherent and eccentric, as is the course of a meteor through the sky. His subjects should often have led him to a process of sober reasoning; yet we find him always substituting sentiment for demonstration. Upon the whole, though we admit him to the first place among those of his own color who have

presented themselves to the public judgment, yet when we compare him with the writers of the race among whom he lived and particularly with the epistolary class in which he has taken his own stand, we are compelled to enrol him at the bottom of the column. This criticism supposes the letters published under his name to be genuine, and to have received amendment from no other hand; points which would not be of easy investigation. The improvement of the blacks in body and mind, in the first instance of their mixture with the whites, has been observed by every one, and proves that their inferiority is not the effect merely of their condition of life. We know that among the Romans, about the Augustan age especially, the condition of their slaves was much more deplorable than that of the blacks on the continent of America. The two sexes were confined in separate apartments, because to raise a child cost the master more than to buy one. Cato, for a very restricted indulgence to his slaves in this particular,[1] took from them a certain price. But in this country the slaves multiply as fast as the free inhabitants. Their situation and manners place the commerce between the two sexes almost without restraint. The same Cato, on a principle of economy, always sold his sick and superannuated slaves. He gives it as a standing precept to a master visiting his farm, to sell his old oxen, old wagons,

[1] Tous doulous etaxen örismenou nomesmatos homilein tais therapainsin.—Plutarch. Cato.

old tools, old and diseased servants, and everything else become useless. "Vendat boves vetulos, plaustrum vetus, feramenta vetera, servum senem, servum morbosum, et si quid aliud supersit vendat." Cato de re rustica, c. 2. The American slaves cannot enumerate this among the injuries and insults they receive. It was the common practice to expose in the island Æsculapius, in the Tyber, diseased slaves whose cure was like to become tedious.[1] The emperor Claudius, by an edict, gave freedom to such of them as should recover, and first declared that if any person chose to kill rather than to expose them, it should not be deemed homicide. The exposing them is a crime of which no instance has existed with us; and were it to be followed by death, it would be punished capitally. We are told of a certain Vedius Pollio, who, in the presence of Augustus, would have given a slave as food to his fish, for having broken a glass. With the Romans, the regular method of taking the evidence of their slaves was under torture. Here it has been thought better never to resort to their evidence. When a master was murdered, all his slaves, in the same house, or within hearing, were condemned to death. Here punishment falls on the guilty only, and as precise proof is required against him as against a freeman. Yet notwithstanding these and other discouraging circumstances among the Romans, their slaves were often their rarest artists. They excelled too in

[1] Suet. Claud. 25.

science, insomuch as to be usually employed as tutors to their master's children. Epictetus, Terence, and Phædrus, were slaves. But they were of the race of whites. It is not their condition then, but nature, which has produced the distinction. Whether further observation will or will not verify the conjecture, that nature has been less bountiful to them in the endowments of the head, I believe that in those of the heart she will be found to have done them justice. That disposition to theft with which they have been branded, must be ascribed to their situation, and not to any depravity of the moral sense. The man in whose favor no laws of property exist, probably feels himself less bound to respect those made in favor of others. When arguing for ourselves, we lay it down as a fundamental, that laws, to be just, must give a reciprocation of right; that, without this, they are mere arbitrary rules of conduct, founded in force, and not in conscience; and it is a problem which I give to the master to solve, whether the religious precepts against the violation of property were not framed for him as well as his slave? And whether the slave may not as justifiably take a little from one who has taken all from him, as he may slay one who would slay him? That a change in the relations in which a man is placed should change his ideas of moral right or wrong, is neither new, nor peculiar to the color of the blacks. Homer tells us it was so two thousand six hundred years ago.

'Emisu, ger t' aretes apoainutai euruopa Zeus
Haneros, eut' an min kata doulion ema elesin.
Odd. 17, 323.

Jove fix'd it certain, that whatever day
Makes man a slave, takes half his worth away.

But the slaves of which Homer speaks were whites. Notwithstanding these considerations which must weaken their respect for the laws of property, we find among them numerous instances of the most rigid integrity, and as many as among their better instructed masters, of benevolence, gratitude, and unshaken fidelity. The opinion that they are inferior in the faculties of reason and imagination, must be hazarded with great diffidence. To justify a general conclusion, requires many observations, even where the subject may be submitted to the anatomical knife, to optical glasses, to analysis by fire or by solvents. How much more then where it is a faculty, not a substance, we are examining; where it eludes the research of all the senses; where the conditions of its existence are various and variously combined; where the effects of those which are present or absent bid defiance to calculation; let me add too, as a circumstance of great tenderness, where our conclusion would degrade a whole race of men from the rank in the scale of beings which their Creator may perhaps have given them. To our reproach it must be said, that though for a century and a half we have had under our eyes the races of black and of red men, they have

never yet been viewed by us as subjects of natural history. I advance it, therefore, as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind. It is not against experience to suppose that different species of the same genus, or varieties of the same species, may possess different qualifications. Will not a lover of natural history then, one who views the gradations in all the races of animals with the eye of philosophy, excuse an effort to keep those in the department of man as distinct as nature has formed them? This unfortunate difference of color, and perhaps of faculty, is a powerful obstacle to the emancipation of these people. Many of their advocates, while they wish to vindicate the liberty of human nature, are anxious also to preserve its dignity and beauty. Some of these, embarrassed by the question, "What further is to be done with them?" join themselves in opposition with those who are actuated by sordid avarice only. Among the Romans emancipation required but one effort. The slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. When freed, he is to be removed beyond the reach of mixture.

The revised code further proposes to proportion crimes and punishments. This is attempted on the following scale:

I. Crimes whose punishment extends to LIFE.

1. High treason. Death by hanging.
   Forfeiture of lands and goods to the commonwealth.
2. Petty treason. Death by hanging. Dissection.
   Forfeiture of half the lands and goods to the representatives of the party slain.
3. Murder.
   1. By poison. Death by poison.
      Forfeiture of one-half, as before.
   2. In duel. Death by hanging. Gibbeting, if the challenger.
      Forfeiture of one-half as before, unless it be the party challenged, then the forfeiture is to the commonwealth.
   3. In any other way. Death by hanging.
      Forfeiture of one-half as before
4. Manslaughter. The second offence is murder.

II. Crimes whose punishment goes to LIMB.

1. Rape .....
2. Sodomy ... } Dismemberment.
3. Maiming...
4. Disfiguring. } Retaliation, and the forfeiture of half of the lands and goods to the sufferer.

III. Crimes punishable by LABOR.

| | | | |
|---|---|---|---|
| 1. Manslaughter, 1st offence. | Labor VII. years | for the public. | Forfeiture of half, as in murder. |
| 2. Counterfeiting money. | Labor VI. years | " | Forfeiture of lands and goods to the commonwealth. |
| 3. Arson.<br>4. Asportation of vessels. | Labor V. years | " | Reparation threefold. |
| 5. Robbery.<br>6. Burglary. | Labor IV. years | " | Reparation double. |
| 7. House-breaking.<br>8. Horse-stealing. | Labor III. years | " | Reparation. |
| 9. Grand larceny. | Labor II. years | " | Reparation. Pillory. |
| 10. Petty larceny. | Labor I. year | " | Reparation. Pillory. |
| 11. Pretensions to witchcraft, &c. | Ducking. | | Stripes. |
| 12. Excusable homicide.<br>13. Suicide.<br>14. Apostasy. Heresy. | To be pitied, not punished. | | |

Pardon and privilege of clergy are proposed to be abolished; but if the verdict be against the defendant, the court in their discretion may allow a new trial. No attainder to cause a corruption of blood, or forfeiture of dower. Slaves guilty of offences punishable in others by labor, to be transported to Africa, or elsewhere, as the circumstances of the time admit, there to be continued in slavery. A rigorous regimen proposed for those condemned to labor.

Another object of the revisal is to diffuse knowledge more generally through the mass of the people. This bill proposes to lay off every county into small districts of five or six miles square, called hundreds, and in each of them to establish a school for teaching, reading, writing, and arithmetic. The tutor to be supported by the hundred, and every person in it entitled to send their children three years gratis, and as much longer as they please, paying for it. These schools to be under a visitor who is annually to choose the boy of best genius in the school, of those whose parents are too poor to give them further education, and to send him forward to one of the grammar schools, of which twenty are proposed to be erected in different parts of the country, for teaching Greek, Latin, Geography, and the higher branches of numerical arithmetic. Of the boys thus sent in one year, trial is to be made at the grammar schools one or two years, and the best genius of the whole selected, and continued six years, and the residue dismissed. By this means twenty of the best geniuses will be raked from the rubbish annually, and be instructed, at the public expense, so far as the grammar schools go. At the end of six years' instruction, one half are to be discontinued (from among whom the grammar schools will probably be supplied with future masters); and the other half, who are to be chosen for the superiority of their parts and disposition, are to be sent and continued three years in the study of such sciences as they shall

choose, at William and Mary college, the plan of which is proposed to be enlarged, as will be hereafter explained, and extended to all the useful sciences. The ultimate result of the whole scheme of education would be the teaching all the children of the State reading, writing, and common arithmetic; turning out ten annually, of superior genius, well taught in Greek, Latin, Geography, and the higher branches of arithmetic; turning out ten others annually, of still superior parts, who, to those branches of learning, shall have added such of the sciences as their genius shall have led them to; the furnishing to the wealthier part of the people convenient schools at which their children may be educated at their own expense. The general objects of this law are to provide an education adapted to the years, to the capacity, and the condition of every one, and directed to their freedom and happiness. Specific details were not proper for the law. These must be the business of the visitors entrusted with its execution. The first stage of this education being the schools of the hundreds, wherein the great mass of the people will receive their instruction, the principal foundations of future order will be laid here. Instead, therefore, of putting the Bible and Testament into the hands of the children at an age when their judgments are not sufficiently matured for religious inquiries, their memories may here be stored with the most useful facts from Grecian, Roman, European and American history. The first elements

of morality too may be instilled into their minds; such as, when further developed as their judgments advance in strength, may teach them how to work out their own greatest happiness, by showing them that it does not depend on the condition of life in which chance has placed them, but is always the result of a good conscience, good health, occupation, and freedom in all just pursuits. Those whom either the wealth of their parents or the adoption of the State shall destine to higher degrees of learning, will go on to the grammar schools, which constitute the next stage, there to be instructed in the languages. The learning Greek and Latin, I am told, is going into disuse in Europe. I know not what their manners and occupations may call for; but it would be very ill-judged in us to follow their example in this instance. There is a certain period of life, say from eight to fifteen or sixteen years of age, when the mind like the body is not yet firm enough for laborious and close operations. If applied to such, it falls an early victim to premature exertion; exhibiting, indeed, at first, in these young and tender subjects, the flattering appearance of their being men while they are yet children, but ending in reducing them to be children when they should be men. The memory is then most susceptible and tenacious of impressions; and the learning of languages being chiefly a work of memory, it seems precisely fitted to the powers of this period, which is long enough, too, for acquiring the most useful lan-

guages, ancient and modern. I do not pretend that language is science. It is only an instrument for the attainment of science. But that time is not lost which is employed in providing tools for future operation; more especially as in this case the books put into the hands of the youth for this purpose may be such as will at the same time impress their minds with useful facts and good principles. If this period be suffered to pass in idleness, the mind becomes lethargic and impotent, as would the body it inhabits if unexercised during the same time. The sympathy between body and mind during their rise, progress and decline, is too strict and obvious to endanger our being missed while we reason from the one to the other. As soon as they are of sufficient age, it is supposed they will be sent on from the grammar schools to the university, which constitutes our third and last stage, there to study those sciences which may be adapted to their views. By that part of our plan which prescribes the selection of the youths of genius from among the classes of the poor, we hope to avail the State of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated. But of the views of this law none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty. For this purpose the reading in the first stage, where *they* will receive their whole education, is proposed, as has

been said, to be chiefly historical. History, by apprizing them of the past, will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views. In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary. An amendment of our constitution must here come in aid of the public education. The influence over government must be shared among all the people. If every individual which composes their mass participates of the ultimate authority, the government will be safe; because the corrupting the whole mass will exceed any private resources of wealth; and public ones cannot be provided but by levies on the people. In this case every man would have to pay his own price. The government of Great Britain has been corrupted, because but one man in ten has a right to vote for members of parliament. The sellers of the government, therefore, get nine-tenths

of their price clear. It has been thought that corruption is restrained by confining the right of suffrage to a few of the wealthier of the people; but it would be more effectually restrained by an extension of that right to such members as would bid defiance to the means of corruption.

Lastly, it is proposed, by a bill in this revisal, to begin a public library and gallery, by laying out a certain sum annually in books, paintings, and statues.

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## QUERY XV.

### *The Colleges and Public Establishments, the Roads, Buildings, &c.*

The college of William and Mary is the only public seminary of learning in this State. It was founded in the time of king William and queen Mary, who granted to it twenty thousand acres of land, and a penny a pound duty on certain tobaccoes exported from Virginia and Maryland, which had been levied by the statute of 25 Car. II. The assembly also gave it, by temporary laws, a duty on liquors imported, and skins and furs exported. From these resources it received upwards of three thousand pounds *communibus annis*. The buildings are of brick, sufficient for an indifferent accommodation of perhaps an hundred students. By its charter it was to be under the government of twenty visitors, who were to be its legislators, and to have a president and six professors, who were incorporated. It

was allowed a representative in the general assembly. Under this charter, a professorship of the Greek and Latin languages, a professorship of mathematics, one of moral philosophy, and two of divinity, were established. To these were annexed, for a sixth professorship, a considerable donation by Mr. Boyle, of England, for the instruction of the Indians, and their conversion to Christianity. This was called the professorship of Brafferton, from an estate of that name in England, purchased with the monies given. The admission of the learners of Latin and Greek filled the college with children. This rendering it disagreeable and degrading to young gentlemen already prepared for entering on the sciences, they were discouraged from resorting to it, and thus the schools for mathematics and moral philosophy, which might have been of some service, became of very little. The revenues, too, were exhausted in accommodating those who came only to acquire the rudiments of science. After the present revolution, the visitors, having no power to change those circumstances in the constitution of the college which were fixed by the charter, and being therefore confined in the number of the professorships, undertook to change the objects of the professorships. They excluded the two schools for divinity, and that for the Greek and Latin languages, and substituted others; so that at present they stand thus:

A Professorship for Law and Police;

Anatomy and Medicine;

A Natural Philosophy and Mathematics;
Moral Philosophy, the Law of Nature and Nations, the Fine Arts;
Modern Languages;
For the Brafferton.

And it is proposed, so soon as the legislature shall have leisure to take up this subject, to desire authority from them to increase the number of professorships, as well for the purpose of subdividing those already instituted, as of adding others for other branches of science. To the professorships usually established in the universities of Europe, it would seem proper to add one for the ancient languages and literature of the north, on account of their connection with our own language, laws, customs, and history. The purposes of the Brafferton institution would be better answered by maintaining a perpetual mission among the Indian tribes, the object of which, besides instructing them in the principles of Christianity, as the founder requires, should be to collect their traditions, laws, customs, languages, and other circumstances which might lead to a discovery of their relation with one another, or descent from other nations. When these objects are accomplished with one tribe, the missionary might pass on to another.

The roads are under the government of the county courts, subject to be controlled by the general court. They order new roads to be opened wherever they think them necessary. The inhabitants of the

county are by them laid off into precincts, to each of which they allot a convenient portion of the public roads to be kept in repair. Such bridges as may be built without the assistance of artificers, they are to build. If the stream be such as to require a bridge of regular workmanship, the court employs workmen to build it, at the expense of the whole county. If it be too great for the county, application is made to the general assembly, who authorize individuals to build it, and to take a fixed toll from all passengers, or give sanction to such other proposition as to them appears reasonable.

Ferries are admitted only at such places as are particularly pointed out by law, and the rates of ferriage are fixed.

Taverns are licensed by the courts, who fix their rates from time to time.

The private buildings are very rarely constructed of stone or brick, much the greatest portion being of scantling and boards, plastered with lime. It is impossible to devise things more ugly, uncomfortable, and happily more perishable. There are two or three plans, on one of which, according to its size, most of the houses in the State are built. The poorest people build huts of logs, laid horizontally in pens, stopping the interstices with mud. These are warmer in winter, and cooler in summer, than the more expensive construction of scantling and plank. The wealthy are attentive to the raising of vegetables, but very little so to fruits. The poorer

people attend to neither, living principally on milk and animal diet. This is the more inexcusable, as the climate requires indispensably a free use of vegetable food, for health as well as comfort, and is very friendly to the raising of fruits. The only public buildings worthy of mention are the capitol, the palace, the college, and the hospital for lunatics, all of them in Williamsburg, heretofore the seat of our government. The capitol is a light and airy structure, with a portico in front of two orders, the lower of which, being Doric, is tolerably just in its proportions and ornaments, save only that the intercolonations are too large. The upper is Ionic, much too small for that on which it is mounted, its ornaments not proper to the order, nor proportioned within themselves. It is crowned with a pediment, which is too high for its span. Yet, on the whole, it is the most pleasing piece of architecture we have. The palace is not handsome without, but it is spacious and commodious within, is prettily situated, and with the grounds annexed to it, is capable of being made an elegant seat. The college and hospital are rude, misshapen piles, which, but that they have roofs, would be taken for brick-kilns. There are no other public buildings but churches and courthouses, in which no attempts are made at elegance. Indeed, it would not be easy to execute such an attempt, as a workman could scarcely be found capable of drawing an order. The genius of architecture seems to have shed its maledictions over this land.

Buildings are often erected, by individuals, of considerable expense. To give these symmetry and taste, would not increase their cost. It would only change the arrangement of the materials, the form and combination of the members. This would often cost less than the burthen of barbarous ornaments with which these buildings are sometimes charged. But the first principles of the art are unknown, and there exists scarcely a model among us sufficiently chaste to give an idea of them. Architecture being one of the fine arts, and as such within the department of a professor of the college, according to the new arrangement, perhaps a spark may fall on some young subjects of natural taste, kindle up their genius, and produce a reformation in this elegant and useful art. But all we shall do in this way will produce no permanent improvement to our country, while the unhappy prejudice prevails that houses of brick or stone are less wholesome than those of wood. A dew is often observed on the walls of the former in rainy weather, and the most obvious solution is, that the rain has penetrated through these walls. The following facts, however, are sufficient to prove the error of this solution: 1. This dew upon the walls appears when there is no rain, if the state of the atmosphere be moist. 2. It appears upon the partition as well as the exterior walls. 3. So, also, on pavements of brick or stone. 4. It is more copious in proportion as the walls are thicker; the reverse of which ought to be the case, if this hypothesis were

just. If cold water be poured into a vessel of stone, or glass, a dew forms instantly on the outside; but if it be poured into a vessel of wood, there is no such appearance. It is not supposed, in the first case, that the water has exuded through the glass, but that it is precipitated from the circumambient air; as the humid particles of vapor, passing from the boiler of an alembic through its refrigerant, are precipitated from the air, in which they are suspended, on the internal surface of the refrigerant. Walls of brick and stone act as the refrigerant in this instance. They are sufficiently cold to condense and precipitate the moisture suspended in the air of the room, when it is heavily charged therewith. But walls of wood are not so. The question then is, whether the air in which this moisture is left floating, or that which is deprived of it, be most wholesome? In both cases the remedy is easy. A little fire kindled in the room, whenever the air is damp, prevents the precipitation on the walls; and this practice, found healthy in the warmest as well as coldest seasons, is as necessary in a wooden as in a stone or brick house. I do not mean to say that the rain never penetrates through walls of brick. On the contrary, I have seen instances of it. But with us it is only through the northern and eastern walls of the house, after a north-easterly storm, this being the only one which continues long enough to force through the walls. This, however, happens too rarely to give a just character of unwholesomeness to such houses. In a house, the

walls of which are of well-burnt brick and good mortar, I have seen the rain penetrate through but twice in a dozen or fifteen years. The inhabitants of Europe, who dwell chiefly in houses of stone or brick, are surely as healthy as those of Virginia. These houses have the advantage, too, of being warmer in winter and cooler in summer than those of wood; of being cheaper in their first construction, where lime is convenient, and infinitely more durable. The latter consideration renders it of great importance to eradicate this prejudice from the minds of our countrymen. A country whose buildings are of wood, can never increase in its improvements to any considerable degree. Their duration is highly estimated at fifty years. Every half century then our country becomes a *tabula rasa*, whereon we have to set out anew, as in the first moment of seating it. Whereas when buildings are of durable materials, every new edifice is an actual and permanent acquisition to the State, adding to its value as well as to its ornament.

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## QUERY XVI.

*The measures taken with regard to the estates and possessions of the Rebels, commonly called Tories?*

A tory has been properly defined to be a traitor in thought but not in deed. The only description, by which the laws have endeavored to come at them, was that of non-jurors, or persons refusing to take

the oath of fidelity to the State. Persons of this description were at one time subjected to double taxation, at another to treble, and lastly were allowed retribution, and placed on a level with good citizens. It may be mentioned as a proof, both of the lenity of our government, and unanimity of its inhabitants, that though this war has now raged near seven years, not a single execution for treason has taken place.

Under this query I will state the measures which have been adopted as to British property, the owners of which stand on a much fairer footing than the tories. By our laws, the same as the English as in this respect, no alien can hold lands, nor alien enemy maintain an action for money, or other movable thing. Lands acquired or held by aliens become forfeited to the State; and, on an action by an alien enemy to recover money, or other movable property, the defendant may plead that he is an alien enemy. This extinguishes his right in the hands of the debtor or holder of his movable property. By our separation from Great Britain, British subjects became aliens, and being at war, they were alien enemies. Their lands were of course forfeited, and their debts irrecoverable. The assembly, however, passed laws at various times, for saving their property. They first sequestered their lands, slaves, and other property on their farms in the hands of commissioners, who were mostly the confidential friends or agents of the owners, and

directed their clear profits to be paid into the treasury; and they gave leave to all persons owing debts to British subjects to pay them also into the treasury. The monies so to be brought in were declared to remain the property of the British subject, and if used by the State, were to be repaid, unless an improper conduct in Great Britain should render a detention of it reasonable. Depreciation had at that time, though unacknowledged and unperceived by the whigs, begun in some small degree. Great sums of money were paid in by debtors. At a later period, the assembly, adhering to the political principles which forbid an alien to hold lands in the State, ordered all British property to be sold; and, become sensible of the real progress of depreciation, and of the losses which would thence occur, if not guarded against, they ordered that the proceeds of the sales should be converted into their then worth in tobacco, subject to the future direction of the legislature. This act has left the question of retribution more problematical. In May, 1780, another act took away the permission to pay into the public treasury debts due to British subjects.

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## QUERY XVII.

*The different religions received into that State?*

The first settlers in this country were emigrants from England, of the English Church, just at a point of time when it was flushed with complete victory

over the religious of all other persuasions. Possessed, as they became, of the powers of making, administering, and executing the laws, they showed equal intolerance in this country with their Presbyterian brethren, who had emigrated to the northern government. The poor Quakers were flying from persecution in England. They cast their eyes on these new countries as asylums of civil and religious freedom; but they found them free only for the reigning sect. Several acts of the Virginia assembly of 1659, 1662, and 1693, had made it penal in parents to refuse to have their children baptized; had prohibited the unlawful assembling of Quakers; had made it penal for any master of a vessel to bring a Quaker into the State; had ordered those already here, and such as should come thereafter, to be imprisoned till they should abjure the country; provided a milder punishment for their first and second return, but death for their third; had inhibited all persons from suffering their meetings in or near their houses, entertaining them individually, or disposing of books which supported their tenets. If no execution took place here, as did in New England, it was not owing to the moderation of the church, or spirit of the legislature, as may be inferred from the law itself; but to historical circumstances which have not been handed down to us. The Anglicans retained full possession of the country about a century. Other opinions began then to creep in, and the great care of the government to support their

own church, having begotten an equal degree of indolence in its clergy, two-thirds of the people had become dissenters at the commencement of the present revolution. The laws, indeed, were still oppressive on them, but the spirit of the one party had subsided into moderation, and of the other had risen to a degree of determination which commanded respect.

The present state of our laws on the subject of religion is this. The convention of May 1776, in their declaration of rights, declared it to be a truth, and a natural right, that the exercise of religion should be free; but when they proceeded to form on that declaration the ordinance of government, instead of taking up every principle declared in the bill of rights, and guarding it by legislative sanction, they passed over that which asserted our religious rights, leaving them as they found them. The same convention, however, when they met as a member of the general assembly in October, 1776, repealed all *acts of Parliament* which had rendered criminal the maintaining any opinions in matters of religion, the forbearing to repair to church, and the exercising any mode of worship; and suspended the laws giving salaries to the clergy, which suspension was made perpetual in October, 1779. Statutory oppressions in religion being thus wiped away, we remain at present under those only imposed by the common law, or by our own acts of assembly. At the common law, *heresy* was a capital offence, punishable

by burning. Its definition was left to the ecclesiastical judges, before whom the conviction was, till the statute of the 1 El. c. 1 circumscribed it, by declaring, that nothing should be deemed heresy, but what had been so determined by authority of the canonical scriptures, or by one of the four first general councils, or by other council, having for the grounds of their declaration the express and plain words of the scriptures. Heresy, thus circumscribed, being an offence against the common law, our act of assembly of October 1777, c. 17, gives cognizance of it to the general court, by declaring that the jurisdiction of that court shall be general in all matters at the common law. The execution is by the writ *De hæretico comburendo*. By our own act of assembly of 1705, c. 30, if a person brought up in the Christian religion denies the being of a God, or the Trinity, or asserts there are more gods than one, or denies the Christian religion to be true, or the scriptures to be of divine authority, he is punishable on the first offence by incapacity to hold any office or employment ecclesiastical, civil, or military; on the second by disability to sue, to take any gift or legacy, to be guardian, executor, or administrator, and by three years' imprisonment without bail. A father's right to the custody of his own children being founded in law on his right of guardianship, this being taken away, they may of course be severed from him, and put by the authority of a court into more orthodox hands. This is a summary view of that religious

slavery under which a people have been willing to remain, who have lavished their lives and fortunes for the establishment of their civil freedom. The error[1] seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg. If it be said, his testimony in a court of justice cannot be relied on, reject it then, and be the stigma on him. Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. Had not the Roman government permitted free inquiry, Christianity could never have been introduced. Had not free inquiry been indulged at the era of the Reformation, the corruptions of

[1] Furneaux passim.

Christianity could not have been purged away. If it be restrained now, the present corruptions will be protected, and new ones encouraged. Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, and the potato as an article of food. Government is just as infallible, too, when it fixes systems in physics. Galileo was sent to the Inquisition for affirming that the earth was a sphere; the government had declared it to be as flat as a trencher, and Galileo was obliged to abjure his error. This error, however, at length prevailed, the earth became a globe, and Descartes declared it was whirled round its axis by a vortex. The government in which he lived was wise enough to see that this was no question of civil jurisdiction, or we should all have been involved by authority in vortices. In fact, the vortices have been exploded, and the Newtonian principle of gravitation is now more firmly established, on the basis of reason, than it would be were the government to step in, and to make it an article of necessary faith. Reason and experiment have been indulged, and error has fled before them. It is error alone which needs the support of government. Truth can stand by itself. Subject opinion to coercion: whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to

coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature. Introduce the bed of Procrustes then, and as there is danger that the large men may beat the small, make us all of a size, by lopping the former and stretching the latter. Difference of opinion is advantageous in religion. The several sects perform the office of a *censor morum* over such other. Is uniformity attainable? Millions of innocent men, women, and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make one half the world fools, and the other half hypocrites. To support roguery and error all over the earth. Let us reflect that it is inhabited by a thousand millions of people. That these profess probably a thousand different systems of religion. That ours is but one of that thousand. That if there be but one right, and ours that one, we should wish to see the nine hundred and ninety-nine wandering sects gathered into the fold of truth. But against such a majority we cannot effect this by force. Reason and persuasion are the only practicable instruments. To make way for these, free inquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves. But every State, says an inquisitor, has established some religion. No two, say I, have established the same. Is this a proof of the infallibility of establishments?

Our sister States of Pennsylvania and New York, however, have long subsisted without any establishment at all. The experiment was new and doubtful when they made it. It has answered beyond conception. They flourish infinitely. Religion is well supported; of various kinds, indeed, but all good enough; all sufficient to preserve peace and order; or if a sect arises, whose tenets would subvert morals, good sense has fair play, and reasons and laughs it out of doors, without suffering the State to be troubled with it. They do not hang more malefactors than we do. They are not more disturbed with religious dissensions. On the contrary, their harmony is unparalleled, and can be ascribed to nothing but their unbounded tolerance, because there is no other circumstance in which they differ from every nation on earth. They have made the happy discovery, that the way to silence religious disputes, is to take no notice of them. Let us too give this experiment fair play, and get rid, while we may, of those tyrannical laws. It is true, we are as yet secured against them by the spirit of the times. I doubt whether the people of this country would suffer an execution for heresy, or a three years' imprisonment for not comprehending the mysteries of the Trinity. But is the spirit of the people an infallible, a permanent reliance? Is it government? Is this the kind of protection we receive in return for the rights we give up? Besides, the spirit of the times may alter, will alter. Our

rulers will become corrupt, our people careless. A single zealot may commence persecutor, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.

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## QUERY XVIII.

*The particular customs and manners that may happen to be received in that State?*

It is difficult to determine on the standard by which the manners of a nation may be tried, whether *catholic* or *particular*. It is more difficult for a native to bring to that standard the manners of his own nation, familiarized to him by habit. There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce be-

tween master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to the worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who, permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the *amor patriæ* of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another; in which he must lock up the faculties of his nature, contribute as far as depends on his individual en-

deavors to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him. With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labor for himself who can make another labor for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labor. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with His wrath? Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever; that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events; that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest. But it is impossible to be temperate and to pursue this subject through the various considerations of policy, of morals, of history natural and civil. We must be contented to hope they will force their way into every one's mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of heaven, for a total emancipa-

tion, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.

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QUERY XIX.

*The present state of manufactures, commerce, interior and exterior trade?*

We never had an interior trade of any importance. Our exterior commerce has suffered very much from the beginning of the present contest. During this time we have manufactured within our families the most necessary articles of clothing. Those of cotton will bear some comparison with the same kinds of manufacture in Europe; but those of wool, flax and hemp are very coarse, unsightly, and unpleasant; and such is our attachment to agriculture, and such our preference for foreign manufactures, that be it wise or unwise, our people will certainly return as soon as they can, to the raising raw materials, and exchanging them for finer manufactures than they are able to execute themselves.

The political economists of Europe have established it as a principle, that every State should endeavor to manufacture for itself; and this principle, like many others, we transfer to America, without calculating the difference of circumstance which should often produce a difference of result. In Europe the lands are either cultivated, or locked

up against the cultivator. Manufacture must therefore be resorted to of necessity not of choice, to support the surplus of their people. But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labor in the earth are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example. It is the mark set on those, who, not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on casualties and caprice of customers. Dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition. This, the natural progress and consequence of the arts, has sometimes perhaps been retarded by accidental circumstances; but, generally speaking, the proportion which the aggregate of the other classes of citizens bears in any State to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of

corruption. While we have land to labor then, let us never wish to see our citizens occupied at a workbench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry; but, for the general operations of manufacture, let our workshops remain in Europe. It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigor. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.

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## QUERY XX.

*A notice of the commercial productions particular to the State, and of those objects which the inhabitants are obliged to get from Europe and from other parts of the world.?*

Before the present war we exported, *communibus annis*, according to the best information I can get, nearly as follows:

| Articles. | Quantity. | Price in Dollars. | Amount in Dollars. |
|---|---|---|---|
| Tobacco | 55,000 hhds. of 1,000 lbs. | at 30d. per hhd. | $1,650,000 |
| Wheat | 800,000 bushels. | at 5-6d. per bush. | 666,666⅔ |
| Indian corn | 600,000 " | at ⅓d. per bush. | 200,000 |
| Shipping | | | 100,000 |
| Masts, planks, scantling, shingles, staves | | | 66,666⅔ |
| Tar, pitch, turpentine | 30,000 barrels. | at 1⅓d. per bbl. | 40,000 |
| Peltry, viz., skins of deer, beavers, otters, musk rats, raccoons, foxes | 180 hhds. of 600 lbs. | at 5-12d. per lb. | 42,000 |
| Pork | 4,000 barrels. | at 10d. per bbl. | 40,000 |
| Flax-seed, hemp, cotton | | | 8,000 |
| Pit coal, pig iron | | | 6,666⅔ |
| Peas | 5,000 bushels. | at ⅔d. per bush. | 3,333⅓ |
| Beef | 1,000 barrels. | at 3⅓d. per bbl. | 3,333⅓ |
| Sturgeon, white shad, herring | | | 3,333⅓ |
| Brandy from peaches and apples, and whiskey | | | 1,666⅔ |
| Horses | | | 1,666⅔ |
| | | | [1]$2,833,333⅓ |

In the year 1758 we exported seventy thousand hogsheads of tobacco, which was the greatest quantity ever produced in this country in one year. But its culture was fast declining at the commencement of this war and that of wheat taken its place; and it must continue to decline on the return of peace. I suspect that the change in the temperature of our climate has become sensible to that plant, which to be good, requires an extraordinary degree of heat. But it requires still more indispensably an uncommon fertility of soil; and the price which it commands at market will not enable the planter to produce this by manure. Was the supply still to

[1] This sum is equal to £850,000; Virginia money, 607,142 guineas.

depend on Virginia and Maryland alone as its culture becomes more difficult, the price would rise so as to enable the planter to surmount those difficulties and to live. But the western country on the Mississippi, and the midlands of Georgia, having fresh and fertile lands in abundance, and a hotter sun, will be able to undersell these two States, and will oblige them to abandon the raising of tobacco altogether. And a happy obligation for them it will be. It is a culture productive of infinite wretchedness. Those employed in it are in a continual state of exertion beyond the power of nature to support. Little food of any kind is raised by them; so that the men and animals on these farms are badly fed, and the earth is rapidly impoverished. The cultivation of wheat is the reverse in every circumstance. Besides clothing the earth with herbage, and preserving its fertility, it feeds the laborers plentifully, requires from them only a moderate toil, except in the season of harvest, raises great numbers of animals for food and service, and diffuses plenty and happiness among the whole. We find it easier to make an hundred bushels of wheat than a thousand weight of tobacco, and they are worth more when made. The weavil indeed is a formidable obstacle to the cultivation of this grain with us. But principles are already known which must lead to a remedy. Thus a certain degree of heat, to wit, that of the common air in summer, is necessary to hatch the eggs. If subterranean granaries, or others, there-

fore, can be contrived below that temperature, the evil will be cured by cold. A degree of heat beyond that which hatches the egg we know will kill it. But in aiming at this we easily run into that which produced putrefaction. To produce putrefaction, however, three agents are requisite, heat, moisture, and the external air. If the absence of any one of these be secured, the other two may safely be admitted. Heat is the one we want. Moisture then, or external air, must be excluded. The former has been done by exposing the grain in kilns to the action of fire, which produces heat, and extracts moisture at the same time; the latter, by putting the grain into hogsheads, covering it with a coating of lime, and heading it up. In this situation its bulk produced a heat sufficient to kill the eggs; the moisture is suffered to remain indeed, but the external air is excluded. A nicer operation yet has been attempted; that is, to produce an intermediate temperature of heat between that which kills the egg, and that which produces putrefaction. The threshing the grain as soon as it is cut, and laying it in its chaff in large heaps, has been found very nearly to hit this temperature, though not perfectly, nor always. The heap generates heat sufficient to kill most of the eggs, whilst the chaff commonly restrains it from rising into putrefaction. But all these methods abridge too much the quantity which the farmer can manage, and enable other countries to undersell him, which are not infested with this insect. There

is still a desideratum then to give with us decisive triumph to this branch of agriculture over that of tobacco. The culture of wheat by enlarging our pasture, will render the Arabian horse an article of very considerable profit. Experience has shown that ours is the particular climate of America where he may be raised without degeneracy. Southwardly the heat of the sun occasions a deficiency of pasture, and northwardly the winters are too cold for the short and fine hair, the particular sensibility and constitution of that race. Animals transplanted into unfriendly climates, either change their nature and acquire new senses against the new difficulties in which they are placed, or they multiply poorly and become extinct. A good foundation is laid for their propagation here by our possessing already great numbers of horses of that blood, and by a decided taste and preference for them established among the people. Their patience of heat without injury, their superior wind, fit them better in this and the more southern climates even for the drudgeries of the plough and wagon. Northwardly they will become an object only to persons of taste and fortune, for the saddle and light carriages. To those, and for these uses, their fleetness and beauty will recommend them. Besides these there will be other valuable substitutes when the cultivation of tobacco shall be discontinued such as cotton in the eastern parts of the State, and hemp and flax in the western.

It is not easy to say what are the articles either of necessity, comfort, or luxury, which we cannot raise, and which we therefore shall be under a necessity of importing from abroad, as everything hardier than the olive, and as hardy as the fig, may be raised here in the open air. Sugar, coffee and tea, indeed, are not between these limits; and habit having placed them among the necessaries of life with the wealthy part of our citizens, as long as these habits remain we must go for them to those countries which are able to furnish them.

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## QUERY XXI.

*The weights, measures and the currency of the hard money? Some details relating to exchange with Europe?*

Our weights and measures are the same which are fixed by acts of parliament in England. How it has happened that in this as well as the other American States the nominal value of coin was made to differ from what it was in the country we had left, and to differ among ourselves too, I am not able to say with certainty. I find that in 1631 our house of burgesses desired of the privy council in England, a coin debased to twenty-five per cent.; that in 1645 they forbid dealing by barter for tobacco, and established the Spanish piece of eight at six shillings, as the standard of their currency; that in 1655 they changed it to five shillings sterling. In 1680 they

sent an address to the king, in consequence of which, by proclamation in 1683, he fixed the value of French crowns, rix dollars, and pieces of eight, at six shillings, and the coin of New England at one shilling. That in 1710, 1714, 1727, and 1762, other regulations were made, which will be better presented to the eye stated in the form of a table as follows:

| | 1710. | 1714. | 1727. | 1762. |
|---|---|---|---|---|
| Guineas | ..... | 26s. | | |
| British gold coin not milled, gold coin of Spain and France, chequins, Arabian gold, moidores of Portugal | ..... | 5s. dwt. | | |
| Coined gold of the empire. | ..... | 5s. dwt. | ..... | 4s. 3d. dwt. |
| English milled silver money, in proportion to the crown, at | ..... | 5s. 10d. | 6s. 3d. | |
| Pieces of eight of Mexico, Seville & Pillar, ducatoons of Flanders, French écus, or silver Louis, crusados of Portugal | 3¾d. dwt. | ..... | 4d. dwt. | |
| Peru pieces, cross dollars, and old rix dollars of the empire | 3½d. dwt. | ..... | 3¾d. dwt. | |
| Old British silver coin not milled | ..... | 3¾d. dwt. | | |

The first symptom of the depreciation of our present paper money, was that of silver dollars selling at six shillings, which had before been worth but five shillings and ninepence. The assembly thereupon raised them by law to six shillings. As the dollar is now likely to become the money-unit of America, as it passes at this rate in some of our sister States, and as it facilitates their computation in pounds and shillings, &c., converso, this seems to be more

convenient than its former denomination. But as this particular coin now stands higher than any other in the proportion of one hundred and thirty-three and a half to one hundred and twenty-five, or sixteen to fifteen, it will be necessary to raise the others in proportion.

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## QUERY XXII.

### *The public Income and Expenses?*

The nominal amount of these varying constantly and rapidly, with the constant and rapid depreciation of our paper money, it becomes impracticable to say what they are. We find ourselves cheated in every essay by the depreciation intervening between the declaration of the tax and its actual receipt. It will therefore be more satisfactory to consider what our income may be when we shall find means of collecting what our people may spare. I should estimate the whole taxable property of this State at an hundred millions of dollars, or thirty millions of pounds, our money. One per cent. on this, compared with anything we ever yet paid, would be deemed a very heavy tax. Yet I think that those who manage well, and use reasonable economy, could pay one and a half per cent., and maintain their household comfortably in the meantime, without aliening any part of their principal, and that the people would submit to this willingly for the

purpose of supporting their present contest. We may say, then, that we could raise, from one million to one million and a half of dollars annually, that is from three hundred to four hundred and fifty thousand pounds, Virginia money.

Of our expenses it is equally difficult to give an exact state, and for the same reason. They are mostly stated in paper money, which varying continually, the legislature endeavors at every session, by new corrections, to adapt the nominal sums to the value it is wished they would bear. I will state them, therefore, in real coin, at the point at which they endeavor to keep them:

| | Dollars. |
|---|---|
| The annual expenses of the general assembly are about | 20,000 |
| The governor | 3,333⅓ |
| The council of state | 10,666⅔ |
| Their clerks | 1,166⅔ |
| Eleven judges | 11,000 |
| The clerk of the chancery | 666⅔ |
| The attorney general | 1,000 |
| Three auditors and a solicitor | 5,333⅓ |
| Their clerks | 2,000 |
| The treasurer | 2,000 |
| His clerks | 2,000 |
| The keeper of the public jail | 1,000 |
| The public printer | 1,666⅔ |
| Clerks of the inferior courts | 43,333⅓ |
| Public levy; this is chiefly for the expenses of criminal justice | 40,000 |
| County levy, for bridges, court-houses, prisons, &c. | 40,000 |
| Members of Congress | 7,000 |
| Quota of the federal civil list, supposed one-sixth of about $78,000 | 13,000 |
| Expenses of collecting, six per cent. on the above | 12,310 |

| | Dollars. |
|---|---|
| The clergy receive only voluntary contributions; suppose them on an average one-eighth of a dollar a tythe on 200,000 tythes | 25,000 |
| Contingencies, to make round numbers not far from truth | 7,523⅓ |
| | $250,000 |

or 53,571 guineas. This estimate is exclusive of the military expense. That varies with the force actually employed, and in time of peace will probably be little or nothing. It is exclusive also of the public debts, which are growing while I am writing, and cannot therefore be now fixed. So it is of the maintenance of the poor, which being merely a matter of charity cannot be deemed expended in the administration of government. And if we strike out the $25,000 for the services of the clergy, which neither makes part of that administration, more than what is paid to physicians, or lawyers, and being voluntary, is either much or nothing as every one pleases, it leaves $225,000, equal to 48,208 guineas, the real cost of the apparatus of government with us. This divided among the actual inhabitants of our country, comes to about two-fifths of a dollar, twenty-one pence sterling, or forty-two sols, the price which each pays annually for the protection of the residue of his property, and the other advantages of a free government. The public revenues of Great Britain divided in like manner on its inhabitants would be sixteen times greater. Deducting even the double of the expenses of government, as before estimated,

from the million and a half of dollars which we before supposed might be annually paid without distress, we may conclude that this State can contribute one million of dollars annually towards supporting the federal army, paying the federal debt, building a federal navy, or opening roads, clearing rivers, forming safe ports, and other useful works.

To this estimate of our abilities, let me add a word as to the application of them. If, when cleared of the present contest, and of the debts with which that will charge us, we come to measure force hereafter with any European power. Such events are devoutly to be deprecated. Young as we are, and with such a country before us to fill with people and with happiness, we should point in that direction the whole generative force of nature, wasting none of it in efforts of mutual destruction. It should be our endeavor to cultivate the peace and friendship of every nation, even of that which has injured us most, when we shall have carried our point against her. Our interest will be to throw open the doors of commerce, and to knock off all its shackles, giving perfect freedom to all persons for the vent of whatever they may choose to bring into our ports, and asking the same in theirs. Never was so much false arithmetic employed on any subject, as that which has been employed to persuade nations that it is their interest to go to war. Were the money which it has cost to gain, at the close of a long war,

a little town, or a little territory, the right to cut wood here, or to catch fish there, expended in improving what they already possess, in making roads, opening rivers, building ports, improving the arts, and finding employment for their idle poor, it would render them much stronger, much wealthier and happier. This I hope will be our wisdom. And, perhaps, to remove as much as possible the occasions of making war, it might be better for us to abandon the ocean altogether, that being the element whereon we shall be principally exposed to jostle with other nations; to leave to others to bring what we shall want, and to carry what we can spare. This would make us invulnerable to Europe, by offering none of our property to their prize, and would turn all our citizens to the cultivation of the earth; and, I repeat it again, cultivators of the earth are the most virtuous and independent citizens. It might be time enough to seek employment for them at sea, when the land no longer offers it. But the actual habits of our countrymen attach them to commerce. They will exercise it for themselves. Wars then must sometimes be our lot; and all the wise can do, will be to avoid that half of them which would be produced by our own follies and our own acts of injustice; and to make for the other half the best preparations we can. Of what nature should these be? A land army would be useless for offence, and not the best nor safest instrument of defence. For either of these purposes, the sea is

the field on which we should meet an European enemy. On that element it is necessary we should possess some power. To aim at such a navy as the greater nations of Europe possess, would be a foolish and wicked waste of the energies of our countrymen. It would be to pull on our own heads that load of military expense which makes the European laborer go supperless to bed, and moistens his bread with the sweat of his brows. It will be enough if we enable ourselves to prevent insults from those nations of Europe which are weak on the sea, because circumstances exist, which render even the stronger ones weak as to us. Providence has placed their richest and most defenceless possessions at our door; has obliged their most precious commerce to pass, as it were, in review before us. To protect this, or to assail, a small part only of their naval force will ever be risked across the Atlantic. The dangers to which the elements expose them here are too well known, and the greater dangers to which they would be exposed at home were any general calamity to involve their whole fleet. They can attack us by detachment only; and it will suffice to make ourselves equal to what they may detach. Even a smaller force than they may detach will be rendered equal or superior by the quickness with which any check may be repaired with us, while losses with them will be irreparable till too late. A small naval force then is sufficient for us, and a small one is necessary. What this should be, I will not

undertake to say. I will only say, it should by no means be so great as we are able to make it. Suppose the million of dollars, or three hundred thousand pounds, which Virginia could annually spare without distress, to be applied to the creating a navy. A single year's contribution would build, equip, man, and send to sea a force which should carry three hundred guns. The rest of the confederacy, exerting themselves in the same proportion, would equip in the same time fifteen hundred guns more. So that one year's contributions would set up a navy of eighteen hundred guns. The British ships of the line average seventy-six guns; their frigates thirty-eight. Eighteen hundred guns then would form a fleet of thirty ships, eighteen of which might be of the line, and twelve frigates. Allowing eight men, the British average, for every gun, their annual expense, including subsistence, clothing, pay, and ordinary repairs, would be about $1,280 for every gun, or $2,304,000 for the whole. I state this only as one year's possible exertion, without deciding whether more or less than a year's exertion should be thus applied.

The value of our lands and slaves, taken conjunctly, doubles in about twenty years. This arises from the multiplication of our slaves, from the extension of culture, and increased demand for lands. The amount of what may be raised will of course rise in the same proportion.

QUERY XXIII.

*The histories of the State, the memorials published in its name in the time of its being a colony, and the pamphlets relating to its interior or exterior affairs present or ancient?*

Captain Smith, who next to Sir Walter Raleigh may be considered as the founder of our colony, has written its history, from the first adventures to it, till the year 1624. He was a member of the council, and afterwards president of the colony; and to his efforts principally may be ascribed its support against the opposition of the natives. He was honest, sensible, and well informed; but his style is barbarous and uncouth. His history, however, is almost the only source from which we derive any knowledge of the infancy of our State.

The reverend William Stith, a native of Virginia, and president of its college, has also written the history of the same period, in a large octavo volume of small print. He was a man of classical learning, and very exact, but of no taste in style. He is inelegant, therefore, and his details often too minute to be tolerable, even to a native of the country, whose history he writes.

Beverley, a native also, has run into the other extreme, he has comprised our history from the first propositions of Sir Walter Raleigh to the year 1700, in the hundredth part of the space which Stith employs for the fourth part of the period.

Sir Walter Keith has taken it up at its earliest period, and continued it to the year 1725. He is agreeable enough in style, and passes over events of little importance. Of course he is short and would be preferred by a foreigner.

During the regal government, some contest arose on the exaction of an illegal fee by Governor Dinwiddie, and doubtless there were others on other occasions not at present recollected. It is supposed that these are not sufficiently interesting to a foreigner to merit a detail.

The petition of the council and burgesses of Virginia to the king, their memorials to the lords, and remonstrance to the commons in the year 1764, began the present contest; and these having proved ineffectual to prevent the passage of the stamp-act, the resolutions of the house of burgesses of 1765 were passed declaring the independence of the people of Virginia of the parliament of Great Britain, in matters of taxation. From that time till the Declaration of Independence by Congress in 1776, their journals are filled with assertions of the public rights.

The pamphlets published in this State on the controverted question, were:

1766, An Inquiry into the rights of the British Colonies, by Richard Bland.

1769, The Monitor's Letters, by Dr. Arthur Lee.

1774, A summary View of the rights of British America.[1]

[1] By the author of these "Notes."

1774, Considerations, &c., by Robert Carter Nicholas.

Since the Declaration of Independence this State has had no controversy with any other, except with that of Pennsylvania, on their common boundary. Some papers on this subject passed between the executive and legislative bodies of the two States, the result of which was a happy accommodation of their rights.

To this account of our historians, memorials, and pamphlets, it may not be unuseful to add a chronological catalogue of American state-papers, as far as I have been able to collect their titles. It is far from being either complete or correct. Where the title alone, and not the paper itself, has come under my observation, I cannot answer for the exactness of the date. Sometimes I have not been able to find any date at all, and sometimes have not been satisfied that such a paper exists. An extensive collection of papers of this description has been for some time in a course of preparation by a gentleman[1] fully equal to the task, and from whom, therefore, we may hope ere long to receive it. In the meantime accept this as the result of my labors, and as closing the tedious detail which you have so undesignedly drawn upon yourself.

[1] Ebenezer Hazard.

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| Pro Johanne Caboto et filiis suis super terra incognita investiganda. 12. Ry. 595. 3. Hakl. 4. 2. Mem. A. 409. | 1496, Mar. 5. 11 H. 7. |
| Billa signata anno 13. Henrici septimi. 3. Hakluyt's voiages 5. | 1498, Feb. 3. 13 H. 7. |
| De potestatibus ad terras incognitas investigandum. 13. Rymer. 37. | 1502, Dec. 19. 18 H. 7. |
| Commission de François I. à Jacques Catier pour l'establissement du Canada. L'Escarbot. 397. 2. Mem. Am. 416. | 1540, Oct. 17. |
| An act against the exaction of money, or any other thing, by any officer for license to traffique into Iseland and New-foundland, made in An. 2. Edwardi sexti. 3. Hakl. 131. | 1548, 2. E. 6. |
| The letters-patent granted by her Majestie to Sir Humphrey Gilbert, knight, for the inhabiting and planting of our people in America. 3. Hakl. 135. | 1578, June 11. 20 El. |
| Letters-patent of Queen Elizabeth to Adrian Gilbert and others to discover the northwest passage to China. 3. Hakl. 96. | 1583, Feb. 6. |
| The letters-patent granted by the Queen's majestie to M. Walter Raleigh. now Knight, for the discovering and planting of new lands and countries, to continue the space of six years and no more. 3. Hakl. 243. | 1584, Mar. 25. 26 El. |
| An assignment by Sir Walter Raleigh for continuing the action of inhabiting and planting his people in Virginia. Hakl. 1st. ed. publ. in 1589. p. 815. | Mar. 7. 31. El. |
| Lettres de Lieutenant General de l'Acadie et pays circonvoisins pour le Sieur de Monts. L'Escarbot. 417. | 1603, Nov. 8. |
| Letters-patent to Sir Thomas Gates, Sir George Somers and others of America. Stith. Apend. No. 1. | 1606, Apr. 10. 4 Jac. 1. |
| An ordinance and constitution enlarging the council of the two colonies in Virginia and America, and augmenting their authority, M. S. | 1607, Mar. 9. 4 Jac. 1. |
| The second charter to the treasurer and company for Virginia, erecting them into a body politick. Stith. Ap. 2. | 1609, May 23. 7 Jac. 1. |
| Letters-patent to the E. of Northampton, granting part of the island of Newfoundland. 1. Harris. 861. | 1610, April 10. Jac. 1. |
| A third charter to the treasurer and company for Virginia. Stith. Ap. 3. | 1611, Mar. 12. 9 Jac. 1. |
| A commission to Sir Walter Raleigh. Qu. | 1617, Jac. 1. |

1620, Apr. 7. 18 Jac. 1. Commissio specialis concernens le garbling herbæ Nocotianæ. 17. Rym. 190.

1620, June 29. 18 Jac. 1. A proclamation for restraint of the disordered trading of tobacco. 17. Rym. 233.

1620, Nov. 3. Jac. 1. A grant of New-England to the council of Plymouth.

1621, July 24. Jac. 1. An ordinance and constitution of the treasurer, council and company in England, for a council of state and general assembly in Virginia. Stith. Ap. 4.

1621, Sep. 10. 20 Jac. 1. A grant of Nova Scotia to Sir William Alexander. 2. Mem. de l'Amérique. 193.

1622, Nov. 6. 20 Jac. 1. A proclamation prohibiting interloping and disorderly trading to New England in America. 17. Rym. 416.

1623, May 9. 21 Jac. 1. De commissione speciali Willelmo Jones militi directa. 17. Rym. 490.

1623. A grant to Sir Edmund Ployden, of New Albion. Mentioned in Smith's examination. 82.

1624, July 15. 22 Jac. 1. De commissione Henrico vicecomiti Mandevill et aliis. 17. Rym. 609.

1624, Aug. 26. 22 Jac. 1. De commissione speciali concernenti gubernationem in Virginia. 17. Rym. 618.

1624, Sep. 29. 22. Jac. 1. A proclamation concerning tobacco. 17. Rym. 621.

1624, Nov. 9. 22 Jac. 1. De concessione demiss, Edwardo Ditchfield et aliis. 17. Rym. 633.

1625, Mar. 2. 22 Jac. 1. A proclamation for the utter prohibiting the importation and use of all tobacco which is not of the proper growth of the colony of Virginia and the Somer islands, or one of them. 17. Rym. 668.

1625, Mar. 4. 1 Car. 1. De commissione directa Georgio Yardeley militi et aliis. 18. Rym. 311.

1625, Apr. 9. 1 Car. 1. Proclamatio de herba Nicotianâ. 18. Rym. 19.

1625, May 13. 1 Car. 1. A proclamation for settlinge the plantation of Virginia. 18. Rym. 72.

1625, July 12. A grant of the soil, barony, and domains of Nova Scotia to Sir Wm. Alexander of Minstrie. 2. Mem. Am. 226.

1626, Jan. 31. 2 Car. 1. Commissio directa a Johanni Wolstenholme militi et aliis. 18. Rym. 831.

1626, Feb. 17. 2 Car. 1. A proclamation touching tobacco. Rym. 848.

1627, Mar. 19. qu? 2 Car. 1. A grant of Massachusetts bay by the council of Plymouth to Sir Henry Roswell and others.

1627, Mar. 26. 3 Car. 1. De concessione commissionis specialis proconcilio in Virginia. 18. Rym. 980.

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| De proclamatione de signatione de tobacco. 18. Rym. 886 | 1627, Mar. 30. 3 Car. 1. |
| De proclamatione pro ordinatione de tobacco. 18. Rym. 920. | 1627, Aug. 9. 3 Car. 1. |
| A confirmation of the grant of Massachusetts bay by the crown. | 1628, Mar. 4. 3 Car. 1. |
| The capitulation of Quebec. Champlain pert. 2. 216. 2. Mem. Am. 489. | 1629, Aug. 19. |
| A proclamation concerning tobacco. 19. Rym. 235. | 1630, Jan. 6. 5 Car. 1. |
| Conveyance of Nova Scotia (Port-royal excepted) by Sir William Alexander to Sir Claude St. Etienne Lord of la Tour and of Uarre and to his son Sir Charles de St. Etienne Lord of St. Denniscourt, on condition that they continue subjects to the king of Scotland under the great seal of Scotland. | 1630, April 30. |
| A proclamation forbidding the disorderly trading with the savages in New England in America, especially the furnishing the natives in those and other parts of America by the English with weapons and habiliments of warre. 19. Ry. 210. 3. Rushw. 82. | 1630–31, Nov. 24. 6 Car. 1. |
| A proclamation prohibiting the selling arms, &c. to the savages in America. Mentioned 3. Rushw. 75. | 1630, Dec. 5. 6 Car. 1. |
| A grant of Connecticut by the council of Plymouth to the E. of Warwick. | 1630, Car. 1. |
| A confirmation by the crown of the grant of Connecticut [said to be in the petty-bag office in England]. | 1630, Car. 1. |
| A conveiance of Connecticut by the E. of Warwick to Lord Say, and Seal, and others. Smith's examination, Appendix No. 1. | 1631, Mar. 19. 6 Car. 1. |
| A special commission to Edward, Earle of Dorsett, and others, for the better plantation of the colony of Virginia. 19. Ry. 301. | 1631, June 27. 7 Car. 1. |
| Litere continentes promissionem regis ad tradenum castrum et habitationem de Kebec in Canada ad regem Francorum. 19. Ry. 303. | 1632, June 29. 7 Car. 1. |
| Traité entre le roy Louis XIII. et Charles roi d'Angleterre pour la restitution de la nouvelle France, la Cadie et Canada et des navires et merchandises pris de part et d'autre. Fait a St. Germain. 19. Ry. 361. 2. Mem. Am. 5. | 1632, Mar. 29. 8 Car. 1. |
| A grant of Maryland to Cæcilius Calvert, baron of Baltimore in Ireland. | 1632, June 20. 8 Car. 1. |

1633, July 3. 9 Car. 1. A petition of the planters of Virginia against the grant to lord Baltimore.

1633, July 3. Order of council upon the dispute between the Virginia planters and lord Baltimore. Votes of repres. Pennsylvania. V.

1633, Aug. 13. 9 Car. 1. A proclamation to prevent abuses growing by the unordered retailing of tobacco. Mentioned 3. Rushw. 191.

1633, Sept. 23. 9 Car. 1. A special commission to Thomas Young to search, discover and find out what ports are not yet inhabited in Virginia and America and other parts thereunto adjoining. 19. Ry. 472.

1633, Oct. 13. 9 Car. 1. A proclamation for preventing of the abuses growing by the unordered retailing of tobacco. 19. Ry. 474.

1633, Mar. 13. Car. 1. A proclamation restraining the abusive venting of tobacco. 19. Rym. 522.

1634, May 19. 10 Car. 1. A proclamation concerning the landing of tobacco, and also forbidding the planting thereof in the king's dominions. 19. Ry. 553.

34, Car. 1. A commission to the Archbishop of Canterbury and 11 others, for governing the American colonies.

1634, June 19. 10 Car. 1. A commission concerning tobacco. M. S.

1635, July 18. 11 Car. 1. A commission from Lord Say, and Seal, and others to John Winthrop to be governor of Connecticut. Smith's App.

1635, Car. 1. A grant to Duke Hamilton.

1636, Apr. 2. 12 Car. 1. De commissione speciali Johanni Harvey militi to pro meliori regemine coloniae in Virginia. 20. Ry. 3.

1637, Mar. 14. Car. 1. A proclamation concerning tobacco. Title in 3. Rush. 617.

1636–7, Mar. 16. 12 Car. 1. De commissione speciali Georgio domino Goring et aliis concessâ concernente venditionem de tobacco absque licentiâ regiâ. 20. Ry. 116.

1637, Apr. 30. 13 Car. 1. A proclamation against disorderly transporting his Majesty's subjects to the plantations within the parts of America. 20. Ry. 143. 3. Rush. 409.

1637, May 1. 13 Car. 1. An order of the privy council to stay 8 ships now in the Thames from going to New England. 3. Rush. 409.

1637, Car. 1. A warrant of the Lord Admiral to stop unconformable ministers from going beyond the sea. 3. Rush. 410.

1638, Apr. 4. Car. 1. Order of council upon Claiborne's petition against Lord Baltimore. Votes of representatives of Pennsylvania. vi.

An order of the king and council that the attorney general draw up a proclamation to prohibit transportation of passengers to New England without license. 3. Rush. 718. — 1638, Apr. 6 14 Car. 1.

A proclamation to restrain the transporting of passengers and provisions to New England without license. 20. Ry. 223. — 1638, May. 1. 14 Car. 1.

A proclamation concerning tobacco. Title 4. Rush. 1060. — 1639, Mar. 25. Car. 1.

A proclamation declaring his majesty's pleasure to continue his commission and letters patents for licensing retailers of tobacco. 20. Ry. 348. — 1639, Aug. 19. 15 Car. 1.

De commissione speciali Henrico Ashton armigero et aliis ad amovendum Henricum Hawley gubernatorem de Barbadoes. 20. Rym. 357. — 1639, Dec. 16. 15 Car. 1.

A proclamation concerning retailers of tobacco. 4. Rush. 966. — 1639, Car. 1.

De constitutione gubernatoris et concilii pro Virginia. 20. Ry. 484. — 1641, Aug. 9. 17 Car. 1.

Articles of union and confederacy entered into by Massachusetts, Plymouth, Connecticut and New-haven. 1. Neale. 223. — 1643, Car. 1.

Deed from George Fenwick to the old Connecticut jurisdiction. — 1644, Car. 1.

An ordinance of the lords and commons assembled in parliament, for exempting from custom and imposition all commodities exported for, or imported from New England, which has been very prosperous and without any public charge to this State, and is likely to prove very happy for the propagation of the gospel in those parts. Tit. in Amer. library 90. 5. No date. But seems by the neighbouring articles to have been in 1644.

An act for charging of tobacco brought from New England with custom and excise. Title in American library 99. 8 — 1644, June 20. Car. 2.

An act for the advancing and regulating the trade of this commonwealth. Tit. in Amer. libr. 99. 9. — 1644, Aug. 1. Car. 2.

Grant of the Northern neck of Virginia to Lord Hopton, Lord Jermyn, Lord Culpepper, Sir John Berkley, Sir William Moreton, Sir Dudley Wyatt, and Thomas Culpepper. — Sep. 18. 1 Car. 2.

An act prohibiting trade with the Barbadoes, Virginia, Bermudas and Antego Scobell's Acts. 1027. — 1650, Oct. 3. 2 Car. 2.

1650, Car. 2. A declaration of Lord Willoughby, governor of Barbadoes, and of his council, against an act of parliament of 3d of hist. of the Puri. Polit. register. 2. cited from 4 Neal. final settlementtans. App. No. 12 but not there.

1650, Car. 2 A. October, 1650. of boundaries between the Dutch New Netherlands and Connecticut.

1651, Sept. 26. 3. Car. 2. Instructions for Captain Robert Dennis, Mr. Richard Bennet, Mr. Thomas Stagge, and Captain William Claibourn, appointed commissioners for the reducing of Virginia and the inhabitants thereof to their due obedience to the commonwealth of England. 1 Thurloe's state papers, 197.

1651, Oct. 9. 8 Car. 2. An act for increase of shipping and encouragement of the navigation of this nation. Scobell's Acts, 1449.

1651–2, Mar. 12. 4 Car. 2. Articles agreed on and concluded at James citie in Virginia for the surrendering and settling of that plantation under the obedience and government of the commonwealth of England, by the commissioners of the council of state, by authoritie of the parliament of England, and by the grand assembly of the governor, council, and burgesse of that state. M. S. [Ante. p. 206.]

1651–2, Mar. 12. 4 Car. 1. An act of indempnitie made at the surrender of the country [of Virginia.] [Ante p. 206.]

1654, Aug. 16. Capitulation de Port Royal. Mem. Am. 507.

1655, Car. 2. A proclamation of the protector relating to Jamaica. 3 Thurl. 75.

1655, Sep. 26. 7 Car. 2. The protector to the commissioners of Maryland. A letter. 4 Thurl. 55.

1655, Oct. 8. 7 Car. 2. An instrument made at the council of Jamaica, Oct. 8, 1655, for the better carrying on of affairs there. 4 Thurl. 17.

1655, Nov. 3. Treaty of Westminster between France and England. 6. corps diplom. part 2. p. 121. 2. Mem. Am. 10.

1656, Mar. 27. 8 Car. 2. The assembly at Barbadoes to the protector. 4 Thurl. 651.

1656, Aug. 9. A grant by Cromwell to Sir Charles de Saint Etienne, a baron of Scotland, Crowne and Temple. A French translation of it. 2 Mem. Am. 511.

1656, Car. 2. A paper concerning the advancement of trade, 5 Thurl. 80.

1656, Car. 2. A brief narration of the English rights to the Northern parts of America. 5 Thurl. 81.

Mr. R. Bennet and Mr. S. Matthew to Secretary Thurlow. 5 Thurl. 482. — 1656, Oct. 10. 8 Car. 2.

Objections against the Lord Baltimore's patent, and reasons why the government of Maryland should not be put into his hands. 5 Thurl. 482. — 1656, Oct. 10. 8 Car. 2.

A paper relating to Maryland. 5 Thurl. 483. — 1656, Oct. 10. 8 Car. 2.

A breviet of the proceedings of the lord Baltimore and his officers and compliers in Maryland, against the authority of the parliament of the commonwealth of England and against his highness the lord protector's authority, laws and government. 5 Thurl. 486. — 1656, Oct. 10. 8 Car. 2.

The assembly of Virginia to secretary Thurlow. 5 Thurl. 497. — 1656, Oct. 15. 8 Car. 2.

The governor of Barbadoes to the protector. 6 Thurl. 69. — 1657, Apr. 4. 9 Car. 2.

Petition of the general court at Hartford upon Connecticut for charter. Smith's exam. App. 4. — 1661, Car. 2.

Charter of the colony of Connecticut. Smith's exam. App. 6. — 1662, Apr. 23. 14 Car. 2.

The first charter granted by Charles II. to the proprietaries of Carolina, to wit, to the Earl of Clarendon, Duke of Albemarle, Lord Craven, Lord Berkeley, Lord Ashley, Sir George Carteret, Sir William Berkeley, and Sir John Colleton. 4 Mem. Am. 554. — 1662-3, Mar. 24. Apr. 4. 15 C. 2.

The concessions and agreement of the lords proprietors of the province of New Cæsarea, or New Jersey, to and with all and every of the adventurers and all such as shall settle or plant there. Smith's New Jersey. App. 1. — 1664, Feb. 10.

A grant of the colony of New York to the Duke of York. — 1664, Mar. 12. 20 Car. 2.

A commission to Colonel Nichols and others to settle disputes in New England. Hutch. Hist. Mass. Bay, App. 537. — 1664, Apr. 26. 16 Car. 2.

The commission to Sir Robert Carre and others to put the Duke of York in possession of New York, New Jersey, and all other lands thereunto appertaining. — 1664, Apr. 26.

Sir Robert Carre and others proclamation to the inhabitants of New York, New Jersey, &c. Smith's N. J. 36.

Deeds of lease and release of New Jersey by the Duke of York to Lord Berkeley and Sir George Carteret. — 1664, June 23. 24. 16 Car. 2.

A conveiance of the Delaware counties to William Penn.

Letters between Stuyvesant and Colonel Nichols on the English right. Smith's N. J. 37—42. — 1664, Aug. 19–29, 20–30, 24. Aug. 25. Sept. 4.

Treaty between the English and Dutch for the surrender of the New Netherlands. Sm. N. J. 42. 1664, Aug. 27.

Nicoll's commission to Sir. Robert Carre to reduce the Dutch on Delaware bay. Sm. N. J. 47. Sept. 3.

Instructions to Sir Robert Carre for reducing of Delaware bay and settling the people there under his majesty's obedience. Sm. N. J. 47.

Articles of capitulation between Sir Robert Carre and the Dutch and Swedes on Delaware bay and Delaware river. Sm. N. J. 49. 1664, Oct. 1.

The determination of the commissioners of the boundary between the Duke of York and Connecticut. Sm. Ex. Ap. 9. 1664, Dec. 1. 16 Car. 2.

The New Haven case. Smith's Ex. Ap. 20. 1664.

The second charter granted by Charles II. to the same proprietors of Carolina. 4. Mem. Am. 586. 1665, June 13. 24. 17 Car. 2.

Declaration de guerre par la France contre l'Angleterre. 3 Mem. Am. 123. 1666, Jan. 26.

Declaration of war by the king of England against the king of France. 1666, Feb. 9. 17 Car. 2.

The treaty of peace between France and England made at Breda. 7 Corps, Dipl. part 1. p. 512. Mem. Am. 32. 1667, July 31.

The treaty of peace and alliance between England and the United Provinces made at Breda. 7. Cor. Dip. p. 1. d. 44. 2. Mem. Am. 40. 1667, July 31.

Acte de la cession de l'Acadie au roi de France. 2. Mem. Am. 40. 1667–8, Feb. 17.

Directions from the governor and council of New York for a better settlement of the government on Delaware. Sm. N. J. 51. 1668, April 21.

Lovelace's order for customs at the Hoarkills. Sm. N. J. 55. 1668.

A confirmation of the grant of the northern neck of Virginia to the Earl of St. Albans, Lord Berkeley, Sir William Moreton and John Tretheway. 16— May 8. 21 Car. 2.

Incorporation of the town of Newcastle or Amstell. 1672.

A demise of the colony of Virginia to the Earl of Arlington and Lord Culpepper for 31 years. M. S. 1673, Feb. 25. 25 Car. 2.

Treaty at London between king Charles II. and the Dutch. Article VI. 1673–4.

Remonstrance against the two grants of Charles II. of Northern and Southern Virginia. Mentd. Beverley 65.

Sir George Carteret's instructions to Governor Cateret. 1674, July 13.

Governor Andros's proclamation on taking possession of Newcastle for the Duke of York. Sm. N. J. 78. 1674, Nov. 9.

A proclamation for prohibiting the importation of commodities of Europe into any of his majesty's plantations in Africa, Asia, or America, which were not laden in England; and for putting all other laws relating to the trade of the plantations in effectual execution. 1675, Oct. 1. 27 Car. 2.

The concessions and agreements of the proprietors, freeholders and inhabitants of the province of West New Jersey in America. Sm. N. J. App. 2. 1676, Mar. 3.

A deed quintipartite for the division of New Jersey. 1676, July 1.

Letter from the proprietors of New Jersey to Richard Hartshorne. Sm. N. J. 80. 1676, Aug. 18.

Proprietors instructions to James Wasse and Richard Hartshorne. Sm. N. J. 83.

The charter of king Charles II. to his subjects of Virginia. M.S. 1676, Oct. 10. 28 Car. 2.

Cautionary epistle from the trustees of Byllinge's part of New Jersey. Sm. N. J. 84. 1676.

Indian deed for the lands between Rankokas creek and Timber creek, in New Jersey. 1677, Sept. 10.

Indian deed for lands from Oldman's creek to Timber creek, in New Jersey. 1677, Sept. 27.

Indian deed for the lands from Rankokos creek to Assunpink creek, in New Jersey. 1677, Oct. 10.

The will of Sir George Cateret, sole proprietor of East Jersey ordering the same to be sold. 1678, Dec. 5.

An order of the king in council for the better encouragement of all his majesty's subjects in their trade to his majesty's plantations, and for the better information of all his majesty's loving subjects in these matters— Lond. Gaz. No. 1596. Title in Amer. library. 134. 6. 1680, Feb. 16.

Arguments against the customs demanded in New West Jersey by the governor of New York, addressed to the Duke's commissioners. Sm. N. J. 117. 1680.

Extracts of proceedings of the committee of trade and plantations; copies of letters, reports, &c., between the board of trade, Mr. Penn, Lord Baltimore and Sir John Werden, in the behalf of the Duke of York and the settlement of the Pennsylvania boundaries by the L. C. J. North. Votes of Repr. Pennsyl. vii.-xiii. 1680, June 14. 23. 25. Oct. 16. Nov. 4. 8. 11. 18. 20. 23. Dec. 16. 1680–1, Jan. 15. 22. Feb. 24.

1631, Mar. 4. A grant of Pennsylvania to William Penn. Votes of Represen. Pennsyl. xviii.
Car. 2.

1681, Apr. 2. The king's declaration to the inhabitants and planters of the province of Pennsylvania. Vo. Repr. Penn. xxiv.

1681, July 11. Certain conditions or concessions agreed upon by William Penn, proprietary and governor of Pennsylvania, and those who are the adventurers and purchasers in the same province. Votes of Rep. Pennsyl. xxiv.

1681, Nov. 9. Fundamental laws of the province of West New Jersey. Sm. N. J. 126.

1681–2, Jan. 14. The methods of the commissioners for settling and regulation of lands in New Jersey. Sm. N. J. 130.

1681–2, F. 1. 2. Indentures of lease and release by the executors of Sir George Carteret to William Penn and 11 others, conveying East Jersey.

1682, Mar. 14. The Duke of York's fresh grant of East New Jersey to the 24 proprietors.

1682, Apr. 25. The frame of the government of the province of Pennsylvania, in America. Votes of Repr. Penn. xxvii.

1682, Aug. 21. The Duke of York's deed for Pennsylvania. Vo. Repr. Penn. xxxv.

1682, Aug. 24. The Duke of York's deed for the feoffment of Newcastle and twelve miles circle to William Penn. Vo. Repr. Penn.

1682, Aug. 24. The Duke of York's deed of feoffment of a tract of land 12 miles south from Newcastle to the Whorekills, to William Penn. Vo. Repr. Penn. xxxvii.

1682, Nov. 27 A commission to Thomas Lord Culpepper to be lieutenant and governor-general of Virginia. M. S.
34 Car. 2.

1682, 10th mon. 6th day. An act of union for annexing and uniting of the counties of Newcastle, Jones's and Whorekill's, alias Deal, to the province of Pennsylvania, and of naturalization of all foreigners in the province and counties aforesaid.

1682, Dec. 6. An act of settlement.

1683, Apr. 2. The frame of the government of the province of Pennsylvania and territories thereunto annexed in America.

1685, Mar. 17. Aug. 18, 26. Sept. 2. Oct. 8, 17, 31. Nov. 7. Proceedings of the committee of trade and Plantations in the dispute between Lord Baltimore and Mr. Penn. Vo. R. P. xiii—xviii.

1683, Apr. 17, 27. May 30. June 12. 1684, Feb. 12. July 2, 16, 23. Sept. 30. Dec. 9.

A commission by the proprietors of East New Jersey to Robert Barclay to be governor. Sm. N. J. 166. 1683, July 17.

An order of council for issuing a quo warranto against the charter of the colony of the Massachusetts bay in New England, with his majesty's declaration that in case the said corporation of Massachusetts bay shall before prosecution had upon the same quo warranto make a full submission and entire resignation to his royal pleasure, he will then regulate their chareter in such a manner as shall be for his service and the good of that colony. Title in American library. 139, 6. 1683, July 26. 35 Car. 2.

A commission to Lord Howard of Effingham to be lieutenant and governor general of Virginia. M. S. 1683, Sept. 28. 35 Car. 2.

The humble address of the chief governor, council and representatives of the island of Nevis, in the West Indies, presented to his majesty by Colonel Netheway and Captain Jefferson, at Windsor, May 3, 1684. Title in Amer. libr. 142. 3. cites Lond. Gaz. No. 1927. 1684, May 3.

A treaty with the Indians at Albany. 1684, Aug. 2.

A treaty of neutrality for America between France and England. 7 Corps Dipl. part 2, p. 44. 2. Mem. Am. 40. 1686, Nov. 16.

By the king, a proclamation for the more effectual reducing and suppressing of pirates and privateers in America, as well on the sea as on the land in great numbers, committing frequent robberies and piracies, which hath occasioned a great prejudice and obstruction to trade and commerce, and given a great scandal and disturbance to our government in those parts. Title Amer. libr. 127. 2. cites Lond. Gaz. No. 2315. 1687, Jan. 10.

Constitution of the council of proprietors of West Jersey. Smith's N. Jersey. 199. 1687, Feb. 12.

A confirmation of the grant of the Northern neck of Virginia to Lord Culpepper. 1687, au. Sept. 27. 4 Jac. 2.

Governor Coxe's declaration to the council of proprietors of West Jersey. Sm. N. J. 190. 1687, Sept. 5.

Provisional treaty of Whitehall concerning America between France and England. 2 Mem. de l'Am. 89. 1687, Dec. 16

Governor Coxe's narrative relating to the division line, directed to the council of proprietors of West Jersey. Sm. App. No. 4. 1687.

The representation of the council of proprietors of West Jersey to Governor Burnet. Smith. App. No. 5. 1687.

The remonstrance and petition of the inhabitants of East New Jersey to the king. Sm. App. No. 8.

The memorial of the proprietors of East New Jersey to the Lords of trade. Sm. App. No. 9.

1778, Sept. 5. Agreement of the line of partition between East and West New Jersey. Smith's N. J. 196.

1691. Conveyance of the government of West Jersey and territories, by Dr. Coxe, to the West Jersey society.

1691, Oct. 7. A charter granted by King William and Queen Mary to the inhabitants of the province of Massachusetts bay, in New England. 2 Mem. de l'Am. 593.

1696, Nov. 7. The frame of government of the province of Pennsylvania and the territories thereunto belonging, passed by Gov. Markham. Nov. 7, 1696.

1697, Sept. 20. The treaty of peace between France and England, made at Ryswick. 7 Corps Dipl. part 2. p. 399. 2 Mem. Am. 89.

1699, July 5. The opinion and answer of the Lords of trade to the memorial of the proprietors of East N. Jersey. Sm. App. No. 10.

1700, Jan. 15. The memorial of the proprietors of East New Jersey to the Lords of trade. Sm. App. No. 11.

The petition of the proprietors of East and West New Jersey to the Lords justices of England. Sm. App. No. 12.

1700, W. 3. A confirmation of the boundary between the colonies of New York and Connecticut, by the crown.

1701, Aug. 12. The memorial of the proprietors of East and West New Jersey to the king. Sm. App. No. 14.

1701, Oct. 2. Representations of the Lords of trade to the Lords justices Sm. App. No. 18.

1701. A treaty with the Indians.

1701–2, Jan. 6. Report of Lords of trade to king William, of draughts of a commission and instructions for a governor of N. Jersey. Sm. N. J. 262.

1702, Apr. 15. Surrender from the proprietors of E. and W. N. Jersey, of their pretended right of government to her majesty Queen Anne. Sm. N. J. 211.

1702, Apr. 17. The Queen's acceptance of the surrender of government of East and West Jersey. Sm. N. J. 219.

1702, Nov. 16. Instructions to lord Cornbury. Sm. N. J. 230.

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| A commission from Queen Anne to Lord Cornbury, to be captain general and governor in chief of New Jersey. Sm. N. J. 220. | 1702, Dec. 5. |
| Recognition by the council of proprietors of the true boundary of the deeds of Sept. 10. and Oct. 10, 1677 (New Jersey). Sm. N. J. 96. | 1703, June 27. |
| Indian deeds for the lands above the falls of the Delaware in West Jersey. | 1703. |
| Indian deed for the lands at the head of Rankokus river, in West Jersey. | |
| A proclamation by Queen Anne, for settling and ascertaining the current rates of foreign coins in America. Sm. N. J. 281. | 1704, June 18. |
| Additional instructions to Lord Cornbury. Sm. N. S. 235. | 1705, May 3. |
| Additional instructions to Lord Cornbury. Sm. N. J. 258. | 1707, May 3. |
| Additional instructions to Lord Cornbury. Sm. N. J. 259. | 1707, Nov. 20. |
| An answer by the council of proprietors for the western division of N. Jersey, to questions proposed to them by Lord Cornbury. Sm. N. J. 285. | 1707. |
| Instructions to Colonel Vetch in his negotiations with the governors of America. Sm. N. J. 364. | 1708–9, Feb. 28. |
| Instructions to the governor of New Jersey and New York. Sm. N. J. 361. | 1708–9, Feb 28. |
| Earl of Dartmouth's letter to governor Hunter. | 1710, Aug. |
| Premiers propositions de la France. 6. Lamberty, 669, 2 Mem. Am. 341. | 1771, Apr. 22. |
| Réponses de la France aux demandes préliminaries de la Grande Bretagne. 6 Lamb. 681. 2 Mem. Amer. 344. | 1711, Oct. 8. |
| Demandes préliminaries plus particulieres de la Grande-Bretagne, avec les réponses. 2 Mem. de l'Am. 346. | 1711, Sept. 27. ——— Oct. 8. |
| L'acceptation de la part de la Grande-Bretagne. 2 Mem. Am. 356. | 1711, Sept. 27. ——— Oct. 8. |
| The Queen's instructions to the Bishop of Bristol and Earl of Stafford, her plenipotentiaries, to treat for a general peace. 6 Lamberty, 744. 2 Mem. Am. 358. | 1711, Dec. 23. |
| A memorial of Mr. St. John to the Marquis de Torci, with regard to North America, to commerce, and to the suspension of arms. 7. Recueil de Lamberty 161, 2 Mem. de l'Amer. 376. | 1712, May 24. ——— June 10. |
| Réponse du roi de France au mémoire de Londres. 7. Lamberty, p. 163. 2 Mem. Am. 380. | 1712, June 10. |

1712, Aug. 19. Traité pour une suspension d'armes entre Louis XIV. roi de France, and Anne, reine de la Grande-Bretagne, fait à Paris. 8. Corps Diplom. part 1. p. 308. 2 Mem. d'Am. 104.

1712, Sept. 10. Offere of France to England, demands of England, and the answers of France. 7. Rec. de Lamb. 461. 2 Mem. Am. 390.

1713, Mar. 31. / Apr. 11. Traité de paix et d'amitié entre Louis XIV. roi de France, et Anne, reine de la Grande-Bretagne, fait à Utrecht. 15 Corps Diplomatique de Dumont, 339. id. Latin. 2 Actes et memoires de la pais d'Utrecht, 457. id. Lat. Fr. 2 Mem. Am. 113.

1713, Mar 31. / April 11. Traité de navigation et de commerce entre Louis XIV. roi de France, et Anne, reine de la Grande-Bretagne. Fait à Utrecht. 8 Corps Dipl. part 1. p. 345. 2 Mem. de l' Am. 137.

1726. A treaty with the Indians.

1728, Jan. The petition of the representatives of the province of New Jersey, to have a distinct governor. Sm. N. J. 421.

1732, G. 2. Deed of release by the government of Connecticut to that of New York.

1732, June 9. 20. 5 Geo. 2. The charter granted by George II. for Georgia. 4 Mem. de l'Am. 617.

1733. Petition of Lord Fairfax, that a commission might issue for running and marking the dividing line between his district and the province of Virginia.

1733, Nov. 29. Order of the king in council for commissioners to survey and settle the said dividing line between the proprietary and royal territory.

1736, Aug. 5. Report of the Lords of trade relating to the separating the government of the province of New Jersey from New York. Sm. N. J. 423.

1737, Aug. 10. Survey and report of the commissioners appointed on the part of the crown to settle the line between the crown and Lord Fairfax.

1737, Aug. 11. Survey and report of the commissioners appointed on the part of Lord Fairfax to settle the line between the crown and him.

1738, Dec. 21. Order of reference of the surveys between the crown and Lord Fairfax to the council for plantation affairs.

1744, June. Treaty with the Indians of the six nations at Lancaster,

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| Report of the council for plantation affairs, fixing the head springs of Rappahanoc and Potomac, and a commission to extend the line. | 1745, Apr. 6. |
| Order of the king in council confirming the said report of the council for plantation affairs. | 1745, Apr. 11. |
| Articles préliminaries pour parvenir à la paix, signés à Aix-la-Chapelle entre les ministres de France, de la Grande-Bretagne, et des Provinces-Unies des Pays-Bas. 2 Mem. de l'Am. 159. | 1748, Apr. 30. |
| Declaration des ministres de France, de la Grande-Bretagne, et des Provinces-Unies des Pays-Bas, pour rectifier les articles I. et II. des préliminaries. 2 Mem. Am. 165. | 1748, May 21. |
| The general and definitive treaty of peace concluded at Aix-la-Chapelle. Lon. Mag. 1748. 503. French. 2 Mem. Am. 169. | 1748, Oct. 7–18. 22 G. 2. |
| A treaty with the Indians. | 1754. |
| A conference between governor Bernard and Indian nations at Burlington. Sm. N. J. 449. | 1758, Aug. 7. |
| A conference between governor Denny, governor Bernard, and others, and Indian nations at Easton. Sm. N. J. 455. | 1758, Oct. 8. |
| The capitulation of Niagara. | 1759, July 25. 33 G. 2. |
| The king's proclamation promising lands to soldiers. | 175–. |
| The definitive treaty concluded at Paris. Lon. Mag. 1763. 149. | 1763, Feb. 10. 3 G. 3. |
| A proclamation for regulating the cessions made by the last treaty of peace. Guth. Geogr. Gram. 623. | 1763, Oct. 7. G. 3. |
| The king's proclamation against settling on any lands on the waters westward of the Alleghany. | 1763. |
| Deed from the six nations of Indians to William Trent, and others, for lands betwixt the Ohio and Monongahela. View of the title to Indiana. Phil. Steiner and Cist. 1776. | 1768, Nov. 3. |
| Deed from the six nations of Indians to the crown for certain lands and settling a boundary. M. S. | 1768, Nov. 5. |

Present Monument over Jefferson's Tomb

This Monument was put up at Monticello in place of the one taken away to the campus of the University of the State of Missouri, at Columbia, in 1882

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# APPENDIX

The preceding sheets have been submitted to my friend Mr. Charles Thompson, Secretary of Congress; he has furnished me with the following observations, which have too much merit not to be communicated:

(A.) p. 22. Besides the three channels of communication mentioned between the western waters and the Atlantic, there are two others to which the Pennsylvanians are turning their attention; one from Presque Isle, on Lake Erie, to Le Bœuf, down the Alleghany to Kiskiminitas, then up the Kiskiminitas, and from thence, by a small portage, to Juniata, which falls into the Susquehanna; the other from Lake Ontario to the East Branch of the Delaware, and down that to Philadelphia. Both these are said to be very practicable; and, considering the enterprising temper of the Pennsylvanians, and particularly of the merchants of Philadelphia, whose object is concentred in promoting the commerce and trade of one city, it is not improbable but one or both of these communications will be open and improved.

(B.) p. 25. The reflections I was led into on viewing this passage of the Potomac through the Blue Ridge were, that this country must have suffered some violent convulsion, and that the face of it must have been changed from what it probably was

some centuries ago; that the broken and ragged faces of the mountain on each side the river; the tremendous rocks, which are left with one end fixed in the precipice, and the other jutting out, and seemingly ready to fall for want of support, the bed of the river for several miles below obstructed, and filled with the loose stones carried from this mound; in short, everything on which you cast your eye evidently demonstrates a disrupture and breach in the mountain, and that, before this happened, what is now a fruitful vale, was formerly a great lake or collection of water, which possibly might have here formed a mighty cascade, or had its vent to the ocean by the Susquehanna, where the Blue Ridge seems to terminate. Besides this, there are other parts of this country which bear evident traces of a like convulsion. From the best accounts I have been able to obtain, the place where the Delaware now flows through the Kittatinney mountain, which is a continuation of what is called the North Ridge, or mountain, was not its original course, but that it passed through what is now called "the Wind-gap," a place several miles to the westward, and about a hundred feet higher than the present bed of the river. This Wind-gap is about a mile broad, and the stones in it such as seem to have been washed for ages by water running over them. Should this have been the case, there must have been a large lake behind that mountain, and by some uncommon swell in the waters, or by some convulsion of nature, the river

must have opened its way through a different part of the mountain, and meeting there with less obstruction, carried away with it the opposing mounds of earth, and deluged the country below with the immense collection of waters to which this new passage gave vent. There are still remaining, and daily discovered, innumerable instances of such a deluge on both sides of the river, after it passed the hills above the falls of Trenton, and reached the Champaign. On the New Jersey side, which is flatter than the Pennsylvania side, all the country below Croswick hills seems to have been overflowed to the distance of from ten to fifteen miles back from the river, and to have acquired a new soil by the earth and clay brought down and mixed with the native sand. The spot on which Philadelphia stands evidently appears to be made ground. The different strata through which they pass in digging to water, the acorns, leaves, and sometimes branches, which are found above twenty feet below the surface, all seem to demonstrate this. I am informed that at Yorktown in Virginia, in the bank of York river, there are different strata of shells and earth, one above another, which seem to point out that the country there has undergone several changes; that the sea has, for a succession of ages, occupied the place where dry land now appears; and that the ground has been suddenly raised at various periods. What a change would it make in the country below, should the mountains at Niagara, by any accident, be cleft

asunder, and a passage suddenly opened to drain off the waters of Erie and the upper lakes! While ruminating on these subjects, I have often been hurried away by fancy, and led to imagine, that what is now the bay of Mexico, was once a champaign country; and that from the point or cape of Florida, there was a continued range of mountains through Cuba, Hispaniola, Porto Rico, Martinique, Guadaloupe, Barbadoes, and Trinidad, till it reached the coast of America, and formed the shores which bounded the ocean, and guarded the country behind; that by come convulsion or shock of nature, the sea had broken through these mounds, and deluged that vast plain, till it reached the foot of the Andes; that being there heaped up by the trade winds, always blowing from one quarter, it had found its way back, as it continues to do, through the Gulf between Florida and Cuba, carrying with it the loam and sand it may have scooped from the country it had occupied, part of which it may have deposited on the shores of North America, and with part formed the banks of Newfoundland. But these are only the visions of fancy.

(3.) p. 51. There is a plant, or weed, called the Jamestown weed,[1] of a very singular quality. The late Dr. Bond informed me, that he had under his care a patient, a young girl, who had put the seeds of this plant into her eye, which dilated the pupil to such a degree, that she could see in the dark, but

[1] Datura pericarpiis erectis ovatis. Linn.

in the light was almost blind. The effect that the leaves had when eaten by a ship's crew that arrived at Jamestown, are well known.[1]

(4.) p. 93. Monsieur Buffon has indeed given an afflicting picture of human nature in his description of the man of America. But sure I am there never was a picture more unlike the original. He grants indeed that his stature is the same as that of the man of Europe. He might have admitted, that the Iroquois were larger, and the Lenopi, or Delawares, taller than people in Europe generally are. But he says their organs of generation are smaller and weaker than those of Europeans. Is this a fact? I believe not; at least it is an observation I never heard before.—"They have no beard." Had he known the pains and trouble it costs the men to pluck out by the roots the hair that grows on their faces, he would have seen that nature had not been deficient in that respect. Every nation has its customs. I have seen an Indian beau, with a looking-glass in his hand, examining his face for hours together, and plucking out by the roots every hair he could discover, with a kind of tweezer made of a piece of fine brass wire, that had been twisted round a stick, and which he used with great dexterity.—"They have no ardor for their females." It is true they do not indulge those excesses, nor discover that fondness which is customary in Europe; but this is

[1] An instance of temporary imbecility produced by them is mentioned, Beverl. H. of Virg. b. 2, c. 4.

not owing to a defect in nature but to manners. Their soul is wholly bent upon war. This is what procures them glory among the men, and makes them the admiration of the women. To this they are educated from their earliest youth. When they pursue game with ardor, when they bear the fatigues of the chase, when they sustain and suffer patiently hunger and cold; it is not so much for the sake of the game they pursue, as to convince their parents and the council of the nation that they are fit to be enrolled in the number of the warriors. The songs of the women, the dance of the warriors, the sage counsel of the chiefs, the tales of the old, the triumphal entry of the warriors returning with success from battle, and the respect paid to those who distinguish themselves in war, and in subduing their enemies; in short, everything they see or hear tends to inspire them with an ardent desire for military fame. If a young man were to discover a fondness for women before he has been to war, he would become the contempt of the men, and the scorn and ridicule of the women. Or were he to indulge himself with a captive taken in war, and much more were he to offer violence in order to gratify his lust, he would incur indelible disgrace. The seeming frigidity of the men, therefore, is the effect of manners, and not a defect of nature. Besides, a celebrated warrior is oftener courted by the females, than he has occasion to court; and this is a point of honor which the men aim at.

Instances similar to that of Ruth and Boaz[1] are not uncommon among them. For though the women are modest and diffident, and so bashful that they seldom lift up their eyes, and scarce ever look a man full in the face, yet, being brought up in great subjection, custom and manners reconcile them to modes of acting, which, judged of by Europeans, would be deemed inconsistent with the rules of female decorum and propriety. I once saw a young widow, whose husband, a warrior, had died about eight days before, hastening to finish her grief, and who, by tearing her hair, beating her breast, and drinking spirits, made the tears flow in great abundance, in order that she might grieve much in a short space of time, and be married that evening to another young warrior. The manner in which this was viewed by the men and women of the tribe, who stood round, silent and solemn spectators of the scene, and the indifference with which they answered my question respecting it, convinced me that it was no unusual custom. I have known men advanced in years, whose wives were old and past child-bearing, take young wives, and have children, though the practice of polygamy is not common. Does this savor of frigidity, or want of ardor for the female? Neither do they seem to be deficient in natural affection. I have seen both fathers and mothers in the deepest

[1] When Boaz had eaten and drank, and his heart was merry, he went to lie down at the end of the heap of corn; and Ruth came softly, and uncovered his feet, and laid her down. Ruth, iii. 7.

affliction, when their children have been dangerously ill; though I believe the affection is stronger in the descending than the ascending scale, and though custom forbids a father to grieve immoderately for a son slain in battle. "That they are timorous and cowardly," is a character with which there is little reason to charge them, when we recollect the manner in which the Iroquois met Monsieur ———, who marched into their country; in which the old men, who scorned to fly, or to survive the capture of their town, braved death, like the old Romans in the time of the Gauls, and in which they soon after revenged themselves by sacking and destroying Montreal. But above all, the unshaken fortitude with which they bear the most excruciating tortures and death when taken prisoners, ought to exempt them from that character. Much less are they to be characterized as a people of no vivacity, and who are excited to action or motion only by the calls of hunger and thirst. Their dances in which they so much delight, and which to an European would be the most severe exercise, fully contradict this, not to mention their fatiguing marches, and the toil they voluntarily and cheerfully undergo in their military expeditions. It is true, that when at home, they do not employ themselves in labor or the culture of the soil; but this again is the effect of customs and manners, which have assigned that to the province of the women. But it is said, they are averse to society and a social life. Can anything be more

inapplicable than this to a people who always live in towns or clans? Or can they be said to have no "republic," who conduct all their affairs in national councils, who pride themselves in their national character, who consider an insult or injury done to an individual by a stranger as done to the whole, and resent it accordingly? In short, this picture is not applicable to any nation of Indians I have ever known or heard of in North America.

(5.) p. 134. As far as I have been able to learn, the country from the sea coast to the Alleghany, and from the most southern waters of James river up to Patuxen river, now in the State of Maryland, was occupied by three different nations of Indians, each of which spoke a different language, and were under separate and distinct governments. What the original or real names of those nations were, I have not been able to learn with certainty; but by us they are distinguished by the names of Powhatans, Mannahoacs, and Monacans, now commonly called Tuscaroras. The Powhatans, who occupied the country from the sea shore up to the falls of the rivers, were a powerful nation, and seem to have consisted of seven tribes, five on the western and two on the eastern shore. Each of these tribes was subdivided into towns, families, or clans, who lived together. All the nations of Indians in North America lived in the hunter state, and depended for subsistence on hunting, fishing, and the spontaneous fruits of the earth, and a kind of grain which was planted and

gathered by the women, and is now known by the name of Indian corn. Long potatoes, pumpkins of various kinds, and squashes, were also found in use among them. They had no flocks, herds, or tamed animals of any kind. Their government is a kind of patriarchal confederacy. Every town or family has a chief, who is distinguished by a particular title, and whom we commonly call "Sachem." The several towns or families that compose a tribe, have a chief who presides over it, and the several tribes composing a nation have a chief who presides over the whole nation. These chiefs are generally men advanced in years, and distinguished by their prudence and abilities in council. The matters which merely regard a town or family are settled by the chief and principal men of the town; those which regard a tribe, such as the appointment of head warriors or captains, and settling differences between different towns and families, are regulated at a meeting or council of the chiefs from the several towns; and those which regard the whole nation, such as the making war, concluding peace, or forming alliances with the neighboring nations, are deliberated on and determined in a national council composed of the chiefs of the tribe, attended by the head warriors and a number of the chiefs from the towns, who are his counsellors. In every town there is a council house, where the chief and old men of the town assemble, when occasion requires, and consult what is proper to be done. Every tribe has a fixed place for the

chiefs of the towns to meet and consult on the business of the tribe; and in every nation there is what they call the central council house, or central council fire, where the chiefs of the several tribes, with the principal warriors, convene to consult and determine on their national affairs. When any matter is proposed in the national council, it is common for the chiefs of the several tribes to consult thereon apart with their counsellors, and when they have agreed, to deliver the opinion of the tribe at the national council; and, as their government seems to rest wholly on persuasion, they endeavor, by mutual concessions, to obtain unanimity. Such is the government that still subsists among the Indian nations bordering upon the United States. Some historians seem to think that the dignity of office of Sachem was hereditary. But that opinion does not appear to be well founded. The sachem or chief of the tribe seems to be by election. And sometimes persons who are strangers, and adopted into the tribe, are promoted to this dignity, on account of their abilities. Thus on the arrival of Captain Smith, the first founder of the colony of Virginia, Opechancanough, who was Sachem or chief of the Chickahominies, one of the tribes of the Powhatans, is said to have been of another tribe, and even of another nation, so that no certain account could be obtained of his origin or descent. The chiefs of the nation seem to have been by a rotation among the tribes. Thus when Captain Smith, in the year 1609, questioned

Powhatan (who was the chief of the nation, and whose proper name is said to have been Wahunsonacock) respecting the succession, the old chief informed him, "that he was very old, and had seen the death of all his people thrice;[1] that not one of these generations were then living except himself; that he must soon die, and the succession descend in order to his brothers Opichapan, Opechancanough, and Catataugh, and then to his two sisters, and their two daughters." But these were appellations designating the tribes in the confederacy. For the persons named are not his real brothers, but the chiefs of different tribes. Accordingly in 1618, when Powhatan died, he was succeeded by Opichapan, and after his decease, Opechancanough became chief of the nation. I need only mention another instance to show that the chiefs of the tribes claimed this kindred with the head of the nation. In 1622, when Raleigh Crashaw was with Japazaw, the Sachem or chief of the Potomacs, Opechancanough, who had great power and influence, being the second man in the nation, and next in succession to Opicha-

[1] This is one generation more than the poet ascribes to the life of Nestor:

> Tō d' ede duo men geneai meropō anthrōpōn
> Ephthiath oi oi prosthen ama traphen ed' egneonto
> En Pulō egathee, meta de tritatoisin anassen.
>
> II. Hom. II. 250.

> Two generations now had passed away,
> Wise by his rules, and happy by his sway;
> Two ages o'er his native realm he reign'd,
> And now th' example of the third remained. POPE.

pan, and who was a bitter but secret enemy to the English, and wanted to engage his nation in a war with them, sent two baskets of beads to the Potomac chief, and desired him to kill the Englishman that was with him. Japazaw replied, that the English were his friends, and Opichapan his *brother*, and that therefore there should be no blood shed between them by his means. It is also to be observed, that when the English first came over, in all their conferences with any of the chiefs, they constantly heard him make mention of his brother, with whom he must consult, or to whom he referred them, meaning thereby either the chief of the nation or the tribes in confederacy. The Manahoacks are said to have been a confederacy of four tribes, and in alliance with the Monacans, in the war which they were carrying on against the Powhatans.

To the northward of these there was another powerful nation which occupied the country from the head of the Chesapeake bay up to the Kittatinney mountain, and as far eastward as Connecticut river, comprehending that part of New York which lies between the Highlands and the ocean, all the State of New Jersey, that part of Pennsylvania which is watered, below the range of the Kittatinney mountains, by the rivers or streams falling into the Delaware, and the county of Newcastle in the State of Delaware, as far as Duck creek. It is to be observed, that the nations of Indians distinguished their countries one from another by natural boundaries, such

as ranges of mountains or streams of water. But as the heads of rivers frequently interlock, or approach near to each other, as those who live upon a stream claim the country watered by it, they often encroached on each other, and this is a constant source of war between the different nations. The nation occupying the tract of country last described, called themselves Lenopi. The French writers call them Loups; and among the English they are now commonly called Delawares. This nation or confederacy consisted of five tribes, who all spoke one language. 1. The Chihohocki, who dwelt on the west side of the river now called Delaware, a name which it took from Lord De la War, who put into it on his passage from Virginia in the year ——, but which by the Indians was called Chihohocki. 2. The Wanami, who inhabit the country called New Jersey, from the Rariton to the sea. 3. The Munsey, who dwelt on the upper streams of the Delaware, from the Kittatinney mountains down to the Lehigh or western branch of the Delaware. 4. The Wabinga, who are sometimes called River Indians, sometimes Mohickanders, and who had their dwelling between the west branch of Delaware and Hudson's river, from the Kittatinney Ridge down to the Rariton; and 5. The Mahiccon, or Manhattan, who occupied Staten Island, York Island (which from its being the principal seat of their residence was formerly called Manhattan), Long Island, and that part of New York and Connecticut which lies between

Hudson and Connecticut rivers, from the highland, which is a continuation of the Kittatinney Ridge down to the Sound. This nation had a close alliance with the Shawanese, who lived on the Susquehanna and to the westward of that river, as far as the Alleghany mountains, and carried on a long war with another powerful nation or confederacy of Indians, which lived to the north of them between the Kittatinney mountains or highlands, and the Lake Ontario, and who call themselves Mingoes, and are called by the French writers Iroquois, by the English the Five Nations, and by the Indians to the southward, with whom they were at war, Massawomacs. This war was carrying on in its greatest fury, when Captain Smith first arrived in Virginia. The Mingo warriors had penetrated down the Susquehannah to the mouth of it. In one of his excursions up the bay, at the mouth of Susquehannah, in 1608, Captain Smith met with six or seven of their canoes full of warriors, who were coming to attack their enemies in the rear. In an excursion which he had made a few weeks before, up the Rappahannock, and in which he had a skirmish with a party of the Manahoacs, and taken a brother of one of their chiefs prisoner, he first heard of this nation. For when he asked the prisoner why his nation attacked the English? the prisoner said, because his nation had heard that the English came from under the world to take their world from them. Being asked, how many worlds he knew? he said, he knew but one, which was

under the sky that covered him, and which consisted of Powhatans, the Manakins, and the Massawomacs. Being questioned concerning the latter, he said, they dwelt on a great water to the North, that they had many boats, and so many men, that they waged war with all the rest of the world. The Mingo confederacy then consisted of five tribes; three who are the elder, to wit, the Senecas, who live to the West, the Mohawks to the East, and the Onondagas between them; and two who are called the younger tribes, namely, the Cayugas and Oneidas. All these tribes speak one language, and were then united in a close confederacy, and occupied the tract of country from the east end of Lake Erie to Lake Champlain, and from the Kittatinney and Highlands to the Lake Ontario and the river Cadaraqui, or St. Lawrence. They had some time before that, carried on a war with a nation, who lived beyond the lakes, and were called Adirondacks. In this war they were worsted; but having made a peace with them, through the intercession of the French who were then settling Canada, they turned their arms against the Lenopi; and as this war was long and doubtful, they, in the course of it, not only exerted their whole force, but put in practice every measure which prudence or policy could devise to bring it to a successful issue. For this purpose they bent their course down the Susquehannah, and warring with the Indians in their way, and having penetrated as far as the mouth of it, they, by the terror of their

arms, engaged a nation, now known by the name of Nanticocks, Conoys, and Tuteloes, and who lived between Chesapeake and Delaware bays, and bordering on the tribe of Chihohocki, to enter into an alliance with them. They also formed an alliance with the Monicans, and stimulated them to a war with the Lenopi and their confederates. At the same time the Mohawks carried on a furious war down the Hudson against the Mohiccons and River Indians, and compelled them to purchase a temporary and precarious peace, by acknowledging them to be their superiors, and paying an annual tribute. The Lenopi being surrounded with enemies, and hard pressed, and having lost many of their warriors, were at last compelled to sue for peace, which was granted to them on the condition that they should put themselves under the protection of the Mingoes, confine themselves to raising corn, hunting for the subsistence of their families, and no longer have the power of making war. This is what the Indians call making them women. And in this condition the Lenopi were when William Penn first arrived and began the settlement of Pennsylvania in 1682.

(6.) p. 135. From the figurative language of the Indians, as well as from the practice of those we are still acquainted with, it is evident that it was and still continues to be, a constant custom among the Indians to gather up the bones of the dead, and deposit them in a particular place. Thus, when they make peace with any nation with whom they have

been at war, after burying the hatchet, they take up the belt of wampum, and say, "We now gather up all the bones of those who have been slain, and bury them," &c. See all the treaties of peace. Besides, it is customary when any of them die at a distance from home, to bury them, and afterwards to come and take up the bones and carry them home. At a treaty which was held at Lancaster with the Six Nations, one of them died, and was buried in the woods a little distance from the town. Some time after a party came and took up the body, separated the flesh from the bones by boiling and scraping them clean, and carried them to be deposited in the sepulchres of their ancestors. The operation was so offensive and disagreeable, that nobody could come near them while they were performing it.

(7.) p. 146. The Osweàtchies, Connosedàgoes and Cohunnegagoes, or, as they are commonly called, Caghnewàgos, are of the Mingo or Six Nation Indians, who, by the influence of the French missionaries, have been separated from their nation, and induced to settle there.

I do not know of what nation the Augquàgahs are, but suspect they are a family of the Senecas.

The Nanticocks and Conõies were formerly of a nation that lived at the head of Chesapeake bay, and who, of late years, have been adopted into the Mingo or Iroquois confederacy, and make a seventh nation. The Monacans or Tuscaroras, who were taken into the confederacy in 1712, making the sixth.

The Saponies are families of the Wanamies, who removed from New Jersey, and with the Mohiccons, Munsies, and Delawares, belonging to the Lenopi nation. The Mingos are a war colony from the Six Nations; so are the Cohunnewagos.

Of the rest of the Northern tribes I never have been able to learn anything certain. But all accounts seem to agree in this, that there is a very powerful nation, distinguished by a variety of names taken from the several towns or families, but commonly called Tàwas or Ottawas, who speak one language, and live round and on the waters that fall into the western lakes, and extend from the waters of the Ohio quite to the waters falling into Hudson's bay.

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## No. II.

In the summer of the year 1783, it was expected that the assembly of Virginia would call a Convention for the establishment of a Constitution. The following draught of a fundamental Constitution for the Commonwealth of Virginia was then prepared, with a design of being proposed in such Convention had it taken place.

To the citizens of the commonwealth of Virginia, and all others whom it may concern, the delegates for the said commonwealth in Convention assembled, send greeting:

It is known to you and to the world, that the government of Great Britain, with which the American States were not long since connected, assumed over them an authority unwarrantable and oppressive; that they endeavored to enforce this authority by

arms, and that the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, considering resistance, with all its train of horrors, as a lesser evil than abject submission, closed in the appeal to arms. It hath pleased the Sovereign Disposer of all human events to give to this appeal an issue favorable to the rights of the States; to enable them to reject forever all dependence on a government which had shown itself so capable of abusing the trusts reposed in it; and to obtain from that government a solemn and explicit acknowledgment that they are free, sovereign, and independent States. During the progress of that war, through which we had to labor for the establishment of our rights, the legislature of the commonwealth of Virginia found it necessary to make a temporary organization of government for preventing anarchy, and pointing our efforts to the two important objects of war against our invaders, and peace and happiness among ourselves. But this, like all other acts of legislation, being subject to change by subsequent legislatures, possessing equal powers with themselves; it has been thought expedient, that it should receive those amendments which time and trial have suggested, and be rendered permanent by a power superior to that of the ordinary legislature. The general assembly therefore of this State recommend it to the good people thereof, to choose delegates to meet in

general convention, with powers to form a constitution of government for them, and to declare those fundamentals to which all our laws present and future shall be subordinate; and, in compliance with this recommendation, they have thought proper to make choice of us, and to vest us with powers for this purpose.

We, therefore, the delegates, chosen by the said good people of this State for the purpose aforesaid, and now assembled in general convention, do in execution of the authority with which we are invested, establish the following constitution and fundamentals of government for the said State of Virginia:

The said State shall forever hereafter be governed as a commonwealth.

The powers of government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy; to wit, those which are legislative to one, those which are judiciary to another, and those which are executive to another. No person, or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly permitted.

The legislature shall consist of two branches, the one to be called the House of Delegates, the other the Senate, and both together the General Assembly. The concurrence of both of these, expressed on three several readings, shall be necessary to the passage of a law.

Delegates for the general assembly shall be chosen on the last Monday of November in every year. But if an election cannot be concluded on that day, it may be adjourned from day to day till it can be concluded.

The number of delegates which each county may send shall be in proportion to the number of its qualified electors; and the whole number of delegates for the State shall be so proportioned to the whole number of qualified electors in it, that they shall never exceed three hundred, nor be fewer than one hundred. Whenever such excess or deficiency shall take place, the House of Delegates so deficient or excessive shall, notwithstanding this, continue in being during its legal term; but they shall, during that term, readjust the proportion, so as to bring their number within the limits before mentioned at the ensuing election. If any county be reduced in its qualified electors below the number authorized to send one delegate, let it be annexed to some adjoining county.

For the election of senators, let the several counties be allotted by the senate, from time to time, into such and so many districts as they shall find best; and let each county at the time of electing its delegates, choose senatorial electors, qualified as themselves are, and four in number for each delegate their county is entitled to send, who shall convene, and conduct themselves, in such manner as the legislature shall direct, with the senatorial electors from the other counties of their district, and then choose, by

ballot, one senator for every six delegates which their district is entitled to choose. Let the senatorial districts be divided into two classes, and let the members elected for one of them be dissolved at the first ensuing general election of delegates, the other at the next, and so on alternately forever.

All free male citizens, of full age, and sane mind, who for one year before shall have been resident in the county, or shall through the whole of that time have possessed therein real property of the value of ——————; or shall for the same time have been enrolled in the militia, and no others, shall have a right to vote for delegates for the said county, and for senatorial electors for the district. They shall give their votes personally, and *viva voce*.

The general assembly shall meet at the place to which the last adjournment was, on the forty-second day after the day of election of delegates, and thenceforward at any other time or place on their own adjournment, till their office expires, which shall be on the day preceding that appointed for the meeting of the next general assembly. But if they shall at any time adjourn for more than one year, it shall be as if they had adjourned for one year precisely. Neither house, without the concurrence of the other, shall adjourn for more than one week, nor to any other place than the one at which they are sitting. The governor shall also have power, with the advice of the council of State, to call them at any other time to the same place, or to a different one, if that

shall have become, since the last adjournment, dangerous from an enemy, or from infection.

A majority of either house shall be a quorum, and shall be requisite for doing business; but any smaller proportion which from time to time shall be thought expedient by the respective houses, shall be sufficient to call for, and to punish, their non-attending members, and to adjourn themselves for any time not exceeding one week.

The members, during their attendance on the general assembly, and for so long a time before and after as shall be necessary for travelling to and from the same, shall be privileged from all personal restraint and assault, and shall have no other privilege whatsoever. They shall receive during the same time, daily wages in gold or silver, equal to the value of two bushels of wheat. This value shall be deemed one dollar by the bushel till the year 1790, in which, and in every tenth year thereafter, the general court, at their first sessions in the year, shall cause a special jury, of the most respectable merchants and farmers, to be summoned, to declare what shall have been the averaged value of wheat during the last ten years; which averaged value shall be the measure of wages for the ten subsequent years.

Of this general assembly, the treasurer, attorney general, register, ministers of the gospel, officers of the regular armies of this State, or of the United States, persons receiving salaries or emoluments from any power foreign to our confederacy, those who are

not resident in the county for which they are chosen delegates, or districts for which they are chosen senators, those who are not qualified as electors, persons who shall have committed treason, felony, or such other crime as would subject them to infamous punishment, or who shall have been convicted by due course of law of bribery or corruption, in endeavoring to procure an election to the said assembly, shall be incapable of being members. All others, not herein elsewhere excluded, who may elect, shall be capable of being elected thereto.

Any member of the said assembly accepting any office of profit under this State, or the United States, or any of them, shall thereby vacate his seat, but shall be capable of being re-elected.

Vacancies occasioned by such disqualifications, by death, or otherwise, shall be supplied by the electors, on a writ from the speaker of the respective house.

The general assembly shall not have power to infringe this constitution; to abridge the civil rights of any person on account of his religious belief; to restrain him from professing and supporting that belief, or to compel him to contributions, other than those he shall have personally stipulated for the support of that or any other; to ordain death for any crime but treason or murder, or military offences; to pardon, or give a power of pardoning persons duly convicted of treason or felony, but instead thereof they may substitute one or two new trials, and no

more; to pass laws for punishing actions done before the existence of such laws; to pass any bill of attainder of treason or felony; to prescribe torture in any case whatever; nor to permit the introduction of any more slaves to reside in this State, or the continuance of slavery beyond the generation which shall be living on the thirty-first day of December, one thousand eight hundred; all persons born after that day being hereby declared free.

The general assembly shall have power to sever from this State all or any parts of its territory westward of the Ohio, or of the meridian of the mouth of the Great Kanhaway, and to cede to Congress one hundred square miles of territory in any other part of this State, exempted from the jurisdiction and government of this State so long as Congress shall hold their sessions therein, or in any territory adjacent thereto, which may be tendered to them by any other State.

They shall have power to appoint the speakers of their respective houses, treasurer, auditors, attorney general, register, all general officers of the military, their own clerks and sergeants, and no other officers, except where, in other parts of this constitution, such appointment is expressly given them.

The executive powers shall be exercised by a *Governor*, who shall be chosen by joint ballot of both houses of assembly, and when chosen shall remain in office five years, and be ineligible a second time. During his term he shall hold no other office or emol-

ument under this State, or any other State or power whatsoever. By executive powers, we mean no reference to those powers exercised under our former government by the crown as of its prerogative, nor that these shall be the standard of what may or may not be deemed the rightful powers of the governor. We give him those powers only, which are necessary to execute the laws (and administer the government), and which are not in their nature either legislative or judiciary. The application of this idea must be left to reason. We do however expressly deny him the prerogative powers of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, light-houses, and sea-marks; of laying embargoes, of establishing precedence, of retaining within the State, or recalling to it any citizen thereof, and of making denizens, except so far as he may be authorized from time to time by the legislature to exercise any of those powers. The power of declaring war and concluding peace, of contracting alliances, of issuing letters of marque and reprisal, of raising and introducing armed forces, of building armed vessels, forts, or strongholds, of coining money or regulating its value, of regulating weights and measures, we leave to be exercised under the authority of the confederation; but in all cases respecting them which are out of the said confederation, they shall be exercised by the governor, under the regulation of such laws as the legislature may think it expedient to pass.

The whole military of the State, whether regular,

or of militia, shall be subject to his directions; but he shall leave the execution of those directions to the general officers appointed by the legislature.

His salary shall be fixed by the legislature at the session of the assembly in which he shall be appointed, and before such appointment be made; or if it be not then fixed, it shall be the same which his next predecessor in office was entitled to. In either case he may demand it quarterly out of any money which shall be in the public treasury; and it shall not be in the power of the legislature to give him less or more, either during his continuance in office, or after he shall have gone out of it. The lands, houses, and other things appropriated to the use of the governor, shall remain to his use during his continuance in office.

A *Council of State* shall be chosen by joint ballot of both houses of assembly, who shall hold their offices seven years, and be ineligible a second time, and who, while they shall be of the said council, shall hold no other office or emolument under this State, or any other State or power whatsoever. Their duty shall be to attend and advise the governor when called on by him, and their advice in any case shall be a sanction to him. They shall also have power, and it shall be their duty, to meet at their own will, and to give their advice, though not required by the governor, in cases where they shall think the public good calls for it. Their advice and proceedings shall be entered in books to be kept for

that purpose, and shall be signed as approved or disapproved by the members present. These books shall be laid before either house of assembly when called for by them. The said council shall consist of eight members for the present; but their numbers may be increased or reduced by the legislature, whenever they shall think it necessary; provided such reduction be made only as the appointments become vacant by death, resignation, disqualification, or regular deprivation. A majority of their actual number, and not fewer, shall be a quorum. They shall be allowed for the present —— each by the year, payable quarterly out of any money which shall be in the public treasury. Their salary, however, may be increased or abated from time to time, at the discretion of the legislature; provided such increase or abatement shall not, by any ways or means, be made to affect either then, or at any future time, any one of those then actually in office. At the end of each quarter their salary shall be divided into equal portions by the number of days on which, during that quarter, a council has been held, or required by the governor, or by their own adjournment, and one of those portions shall be withheld from each member for every of the said days which, without cause allowed good by the board, he failed to attend, or departed before adjournment without their leave. If no board should have been held during that quarter, there shall be no deduction.

They shall annually choose a *President*, who shall preside in council in the absence of the governor, and who, in case of his office becoming vacant by death or otherwise, shall have authority to exercise all his functions, till a new appointment be made, as he shall also in any interval during which the governor shall declare himself unable to attend to the duties of his office.

The *Judiciary* powers shall be exercised by county courts and such other inferior courts as the legislature shall think proper to continue or to erect, by three superior courts, to wit, a Court of Admiralty, a general Court of Common Law, and a High Court of Chancery; and by one Supreme Court, to be called the Court of Appeals.

The judges of the high court of chancery, general court, and court of admiralty, shall be four in number each, to be appointed by joint ballot of both houses of assembly, and to hold their offices during good behavior. While they continue judges, they shall hold no other office or emolument, under this State, or any other State or power whatsoever, except that they may be delegated to Congress, receiving no additional allowance.

These judges, assembled together, shall constitute the Court of Appeals, whose business shall be to receive and determine appeals from the three superior courts, but to receive no original causes, except in the cases expressly permitted herein.

A majority of the members of either of these courts,

and not fewer, shall be a quorum. But in the Court of Appeals nine members shall be necessary to do business. Any smaller numbers however may be authorized by the legislature to adjourn their respective courts.

They shall be allowed for the present —— each by the year, payable quarterly out of any money which shall be in the public treasury. Their salaries, however, may be increased or abated, from time to time, at the discretion of the legislature, provided such increase or abatement shall not by any ways or means, be made to affect, either then, or at any future time, any one of those then actually in office. At the end of each quarter their salary shall be divided into equal portions by the number of days on which, during that quarter, their respective courts sat, or should have sat, and one of these portions shall be withheld from each member for every of the said days which, without cause allowed good by his court, he failed to attend, or departed before adjournment without their leave. If no court should have been held during the quarter, there shall be no deduction.

There shall, moreover, be a *Court of Impeachments*, to consist of three members of the Council of State, one of each of the superior courts of Chancery, Common Law, and Admiralty, two members of the house of delegates and one of the Senate, to be chosen by the body respectively of which they are. Before this court any member of the three branches

of government, that is to say, the governor, any member of the council, of the two houses of legislature, or of the superior courts, may be impeached by the governor, the council, or either of the said houses or courts, and by no other, for such misbehavior in office as would be sufficient to remove him therefrom; and the only sentence they shall have authority to pass shall be that of deprivation and future incapacity of office. Seven members shall be requisite to make a court, and two-thirds of those present must concur in the sentence. The offences cognizable by this court shall be cognizable by no other, and they shall be triers of the fact as well as judges of the law.

The justices or judges of the inferior courts already erected, or hereafter to be erected, shall be appointed by the governor, on advice of the council of State, and shall hold their offices during good behavior, or the existence of their courts. For breach of the good behavior, they shall be tried according to the laws of the land, before the Court of Appeals, who shall be judges of the fact as well as of the law. The only sentence they shall have authority to pass shall be that of deprivation and future incapacity of office, and two-thirds of the members present must concur in this sentence.

All courts shall appoint their own clerks, who shall hold their offices during good behavior, or the existence of their court; they shall also appoint all other attending officers to continue during their

pleasure. Clerks appointed by the supreme or superior courts shall be removable by their respective courts. Those to be appointed by other courts shall have been previously examined, and certified to be duly qualified, by some two members of the general court, and shall be removable for breach of the good behavior by the Court of Appeals only, who shall be judges of the fact as well as of the law. Two-thirds of the members present must concur in the sentence.

The justices or judges of the inferior courts may be members of the legislature.

The judgment of no inferior court shall be final, in any civil case, of greater value than fifty bushels of wheat, as last rated in the general court for setting the allowance to the members of the general assembly, nor in any case of treason, felony, or other crime which should subject the party to infamous punishment.

In all causes depending before any court, other than those of impeachments, of appeals, and military courts, facts put in issue shall be tried by jury, and in all courts whatever witnesses shall give testimony *viva voce* in open court, wherever their attendance can be procured; and all parties shall be allowed counsel and compulsory process for their witnesses.

Fines, amercements, and terms of imprisonment left indefinite by the law, other than for contempts, shall be fixed by the jury, triers of the offence.

The governor, two councillors of State, and a

judge from each of the superior Courts of Chancery, Common Law, and Admiralty, shall be a council to revise all bills which shall have passed both houses of assembly, in which council the governor, when present, shall preside. Every bill, before it becomes a law, shall be represented to this council, who shall have a right to advise its rejection, returning the bill, with their advice and reasons in writing, to the house in which it originated, who shall proceed to reconsider the said bill. But if after such reconsideration, two-thirds of the house shall be of opinion that the bill should pass finally, they shall pass and send it, with the advice and written reasons of the said Council of Revision, to the other house, wherein if two-thirds also shall be of opinion it should pass finally, it shall thereupon become law; otherwise it shall not.

If any bill, presented to the said council, be not, within one week (exclusive of the day of presenting it) returned by them, with their advice of rejection and reasons, to the house wherein it originated, or to the clerk of the said house, in case of its adjournment over the expiration of the week, it shall be law from the expiration of the week, and shall then be demandable by the clerk of the House of Delegates, to be filed of record in his office.

The bills which they approve shall become law from the time of such approbation, and shall then be returned to, or demandable by, the clerk of the House of Delegates, to be filed of record in his office.

A bill rejected on advice of the Council of Revision may again be proposed, during the same session of assembly, with such alterations as will render it conformable to their advice.

The members of the said Council of Revision shall be appointed from time to time by the board or court of which they respectively are. Two of the executive and two of the judiciary members shall be requisite to do business; and to prevent the evils of non-attendance, the board and courts may at any time name all, or so many as they will, of their members, in the particular order in which they would choose the duty of attendance to devolve from preceding to subsequent members, the preceding failing to attend. They shall have additionally for their services in this council the same allowance as members of assembly have.

The confederation is made a part of this constitution, subject to such future alterations as shall be agreed to by the legislature of this State, and by all the other confederating States.

The delegates to Congress shall be five in number; any three of whom, and no fewer, may be a representation. They shall be appointed by joint ballot of both houses of assembly for any term not exceeding one year, subject to be recalled, within the term, by joint vote of both the said houses. They may at the same time be members of the legislative or judiciary departments, but not of the executive.

The benefits of the writ of Habeas Corpus shall be

extended, by the legislature, to every person within this State, and without fee, and shall be so facilitated that no person may be detained in prison more than ten days after he shall have demanded and been refused such writ by the judge appointed by law, or if none be appointed, then by any judge of a superior court, nor more than ten days after such writ shall have been served on the person detaining him, and no order given, on due examination, for his remandment or discharge.

The military shall be subordinate to the civil power.

Printing presses shall be subject to no other restraint than liableness to legal prosecution for false facts printed and published.

Any two of the three branches of government concurring in opinion, each by the voice of two-thirds of their whole existing number, that a convention is necessary for altering this constitution, or correcting breaches of it, they shall be authorized to issue writs to every county for the election of so many delegates as they are authorized to send to the general assembly, which elections shall be held, and writs returned, as the laws shall have provided in the case of elections of delegates of assembly, *mutatis mutandis*, and the said delegates shall meet at the usual place of holding assemblies, three months after date of such writs, and shall be acknowledged to have equal powers with this present convention. The said writs shall be signed by all the members approving the same.

*To introduce this government*, the following special and temporary provision is made.

This convention being authorized only to amend those laws which constituted the form of government, no general dissolution of the whole system of laws can be supposed to have taken place; but all laws in force at the meeting of this convention, and not inconsistent with this constitution, remain in full force, subject to alterations by the ordinary legislature.

The present general assembly shall continue till the forty-second day after the last Monday of November in this present year. On the said last Monday of November in this present year, the several counties shall by their electors qualified as provided by this constitution, elect delegates, which for the present shall be, in number, one for every ——— militia of the said county, according to the latest returns in possession of the governor, and shall also choose senatorial electors in proportion thereto, which senatorial electors shall meet on the fourteenth day after the day of their election, at the court house of that county of their present district which would stand first in an alphabetical arrangement of their counties, and shall choose senators in the proportion fixed by this constitution. The elections and returns shall be conducted, in all circumstances not hereby particularly prescribed, by the same persons and under the same forms as prescribed by the present laws in elections of senators

and delegates of assembly. The said senators and delegates shall constitute the first general assembly of the new government, and shall specially apply themselves to the procuring an exact return from every county of the number of its qualified electors, and to the settlement of the number of delegates to be elected for the ensuing general assembly.

The present governor shall continue in office to the end of the term for which he was elected.

All other officers of every kind shall continue in office as they would have done had their appointment been under this constitution, and new ones, where new are hereby called for, shall be appointed by the authority to which such appointment is referred. One of the present judges of the general court, he consenting thereto, shall by joint ballot of both houses of assembly, at their first meeting, be transferred to the High Court of Chancery.

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## No. III.

An Act for establishing Religious Freedom, passed in the Assembly of Virginia in the beginning of the year 1786.

Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by

coercions on either, as was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages

to which in common with his fellow citizens he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its offices to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

*Be it therefore enacted by the General Assembly,* That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever,

nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities.

And though we well know this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with the powers equal to our own, and that therefore to declare this act irrevocable, would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

## AN APPENDIX RELATIVE TO THE MURDER OF LOGAN'S FAMILY.[1]

The "Notes on Virginia" were written, in Virginia, in the years 1781 and 1782, in answer to certain queries proposed to me by Monsieur de Marbois, then secretary of the French legation in the United States; and a manuscript copy was delivered to him. A few copies, with some additions, were afterwards, in 1784, printed in Paris, and given to particular friends. In speaking of the animals of America, the theory of M. de Buffon, the Abbé Raynal, and others presented itself to consideration. They have supposed there is something in the soil, climate, and other circumstances of America, which occasions animal nature to degenerate, not excepting even the man, native or adoptive, physical or moral. This theory, so unfounded and degrading to one-third of the globe, was called to the bar of fact and reason. Among other proofs adduced in contradiction of this hypothesis, the speech of Logan, an Indian chief, delivered to Lord Dunmore in 1774, was produced, as a specimen of the talents of the aboriginals of this country, and particularly of their eloquence; and it was believed that Europe had never produced anything superior to this morsel of eloquence. In order to make it intelligible to the reader, the transaction, on which it was founded, was stated, as it

[1] In connection with this appendix see letter to Governor Henry, printed as Note in p. 89.

had been generally related in America at the time, and as I had heard it myself, in the circle of Lord Dunmore, and the officers who accompanied him; and the speech itself was given as it had, ten years before the printing of that book, circulated in the newspapers through all the then colonies, through the magazines of Great Britain, and periodical publications of Europe. For three and twenty years it passed uncontradicted; nor was it ever suspected that it even admitted contradiction. In 1797, however, for the first time, not only the whole transaction respecting Logan was affirmed in the public papers to be false, but the speech itself suggested to be a forgery, and even a forgery of mine, to aid me in proving that the man of America was equal in body and in mind, to the man of Europe. But wherefore the forgery; whether Logan's or mine, it would still have been American. I should indeed consult my own fame if the suggestion, that this speech is mine, were suffered to be believed. He would have just right to be proud who could with truth claim that composition. But it is none of mine; and I yield it to whom it is due.

On seeing then that this transaction was brought into question, I thought it my duty to make particular inquiry into its foundation. It was the more my duty, as it was alleged that, by ascribing to an individual therein named, a participation in the murder of Logan's family, I had done an injury to his char-

acter, which it had not deserved. I had no knowledge personally of that individual. I had no reason to aim an injury at him. I only repeated what I had heard from others, and what thousands had heard and believed as well as myself; and which no one indeed, till then, had been known to question. Twenty-three years had now elapsed, since the transaction took place. Many of those acquainted with it were dead, and the living dispersed to very distant parts of the earth. Few of them were even known to me. To those however of whom I knew, I made application by letter; and some others, moved by a regard for truth and justice, were kind enough to come forward, of themselves, with their testimony. These fragments of evidence, the small remains of a mighty mass which time has consumed, are here presented to the public, in the form of letters, certificates, or affidavits, as they came to me. I have rejected none of these forms, nor required other solemnities from those whose motives and characters were pledges of their truth. Historical transactions are deemed to be well vouched by the simple declarations of those who have borne a part in them; and especially of persons having no interest to falsify or disfigure them. The world will now see whether they, or I, have injured Cresap, by believing Logan's charge against him; and they will decide between Logan and Cresap, whether Cresap was innocent, and Logan a calumniator?

In order that the reader may have a clear concep-

tion of the transactions, to which the different parts of the following declarations refer, he must take notice that they establish four different murders. 1. Of two Indians, a little above Wheeling. 2. Of others at Grave Creek, among whom were some of Logan's relations. 3. The massacre at Baker's bottom, on the Ohio, opposite the mouth of Yellow Creek, where were other relations of Logan. 4. Of those killed at the same place, coming in canoes to the relief of their friends. I place the numbers 1, 2, 3, 4, against certain paragraphs of the evidence, to indicate the particular murder to which the paragraph relates, and present also a small sketch or map of the principal scenes of these butcheries, for their more ready comprehension.

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*Extract of a letter from the Honorable Judge Innes, of Frankfort in Kentucky, to Thomas Jefferson, dated Kentucky, near Frankfort, March 2d, 1799.*

I recollect to have seen Logan's speech in 1775, in one of the public prints. That Logan conceived Cresap to be the author of the murder at Yellow Creek, it is in my power to give, perhaps, a more particular information, than any other person you can apply to.

In 1774 I lived in Fincastle county, now divided into Washington, Montgomery and part of Wythe. Being intimate in Col. Preston's family, I happened in July to be at his house, when an express was sent to him as County Lieut. requesting a guard of the militia to be ordered out for the protection of the inhabitants residing low down on the north fork of Holston river. The express brought with him a War Club, and a note which was left tied to it at the house of one Robertson, whose family were cut off by the Indians, and gave rise for the application to Col. Preston, of which the following is a copy, then taken by me in my memorandum book.

"Captain Cresap,—What did you kill my people on Yellow Creek for? The white people killed my kin at Conestoga, a great while ago; and I thought nothing of that. But you killed my kin again, on Yellow Creek, and took my Cousin Prisoner. Then I thought I must kill too; and I have been three times to war since; but the Indians are not angry; only myself.

"July 21st, 1774. CAPTAIN JOHN LOGAN."

With great respect, I am, Dear Sir, your most obedient servant,

HARRY INNES

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ALLEGHANY COUNTY, *ss.*
STATE OF PENNSYLVANIA.

Before me, the subscriber, a justice of the peace in and for said county, personally appeared John Gibson, Esquire, an associate Judge of same county, who being duly sworn, deposeth and saith that he traded with the Shawanese and other tribes of Indians then settled on the Siota in the year 1773, and in the beginning of the year 1774, and that in the month of April of the same year, he left the same Indian towns, and came to this place, in order to procure some goods and provisions, that he remained here only a few days, and then set out in company with a certain Alexander Blaine and M. Elliot by water to return to the towns on the Siota, and that one evening as they were drifting in their canoes near the Long Reach on the Ohio, they were hailed by a number of white men on the South West shore, who requested them to put ashore, as they had disagreeable news to inform them of; that we then landed on shore; and found amongst the party, a Major Angus M'Donald from West Chester, a Doctor Woods from same place, and a party as they said of one hundred and fifty men. We then asked the news. They informed us that some of the party who had been taken up, and improving lands near the Big Kanhawa river, had seen another party of white men, who informed them that they and some others had fell in with a party of Shawanese, who had been hunting on the South West side of the Ohio, that they had killed the whole of the Indian party, and that the others had gone across the country to Cheat river with the horses and plunder, the consequence of which they apprehended would be an Indian war, and that they were flying away. On making inquiry of them when this murder should have happened, we found that it must have been some considerable time before we left the Indian towns, and that there was not

the smallest foundation for the report, as there was not a single man of the Shawanese, but what returned from hunting long before this should have happened.

We then informed them that if they would agree to remain at the place we then were, one of us would go to Hock Hocking river with some of their party, where we should find some of our people making canoes, and that if we did not find them there, we might conclude that everything was not right. Doctor Wood and another person then proposed going with me; the rest of the party seemed to agree, but said they would send and consult Captain Cresap, who was about two miles from that place. They sent off for him, and during the greatest part of the night they behaved in the most disorderly manner, threatening to kill us, and saying the damned traders were worse than the Indians and ought to be killed. In the morning Captain Michael Cresap came to the camp. I then gave him the information as above related. They then met in council, and after an hour or more Captain Cresap returned to me, and informed that he could not prevail on them to adopt the proposal I had made to them, that as he had a great regard for Captain R. Callender, a brother-in-law of mine, with whom I was connected in trade, he advised me by no means to think of proceeding any further, as he was convinced the present party would fall on and kill every Indian they met on the river, that for his part he should not continue with them, but go right across the country to Red-Stone to avoid the consequences. That we then proceeded to Hocking and went up the same to the canoe place where we found our people at work, and after some days we proceeded to the towns on Siota by land. On our arrival there, we heard of the different murders committed by the party on their way up the Ohio.

This Deponent further saith that in the year 1774, he accompanied Lord Dunmore on the expedition against the Shawanese and other Indians on the Siota, that on their arrival within fifteen miles of the towns, they were met by a flag, and a white man of the name of Elliot, who informed Lord Dunmore that the Chiefs of the Shawanese had sent to request his Lordship to halt his army and send in some person, who understood their language; that this Deponent, at the request of Lord Dunmore and the whole of the officers with him, went in; that on his arrival at the towns, Logan, the Indian, came to where the deponent was sitting with the Corn-Stalk, and the other chiefs of the Shawanese, and asked him to walk out with him; that they went into a copse of wood, where they sat down, when Logan, after shedding abundance of tears, delivered to him the speech, nearly as related by Mr. Jefferson in his Notes on the State of Virginia; that he the deponent told him

that it was not Col. Cresap who had murdered his relations, and that although his son Captain Michael Cresap was with the party who killed a Shawanese chief and other Indians, yet he was not present when his relations were killed at Baker's, near the mouth of Yellow Creek on the Ohio; that this Deponent on his return to camp delivered the speech to Lord Dunmore; and that the murders perpetrated as above were considered as ultimately the cause of the war of 1774, commonly called Cresap's war. JOHN GIBSON.

Sworn and subscribed the 4th April, 1800, at Pittsburg, before me,
JER. BARKER.

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*Extract of a letter from Col. Ebenezer Zane, to the honorable John Brown, one of the Senators in Congress from Kentucky; dated Wheeling, Feb. 4th, 1800.*

I was myself, with many others, in the practice of making improvements on lands upon the Ohio, for the purpose of acquiring rights to the same. Being on the Ohio at the mouth of Sandy Creek, in company with many others, news circulated that the Indians had robbed some of the Land jobbers. This news induced the people generally
1 to ascend the Ohio. I was among the number. On our arrival at the Wheeling, being informed that there were two Indians with some traders near and above Wheeling, a proposition was made by the then Captain Michael Cresap to waylay and kill the Indians upon the river. This measure I opposed with much violence, alleging that the killing of those Indians might involve the country in a war. But the opposite party prevailed, and proceeded up the Ohio with Captain Cresap at their head.

In a short time the party returned, and also the traders, in a canoe; but there were no Indians in the company. I inquired what had become of the Indians, and was informed by the traders and Cresap's party that they had fallen overboard. I examined the canoe, and saw much fresh blood and some bullet holes in the canoe. This fully convinced me that the party had killed the two Indians, and thrown them into the river.

On the afternoon of the day this action happened, a report prevailed
2 that there was a camp, or party of Indians on the Ohio below and near the Wheeling. In consequence of this information, Captain Cresap with his party, joined by a number of recruits, proceeded immediately down the Ohio for the purpose, as was then generally under-

stood, of destroying the Indians above mentioned. On the succeeding day, Captain Cresap and his party returned to Wheeling, and it was generally reported by the party that they had killed a number of Indians. Of the truth of this report I had no doubt, as one of Cresap's party was badly wounded, and the party had a fresh scalp, and a quantity of property, which they called Indian plunder. At the time of the last-mentioned transaction, it was generally reported that the party of Indians down the Ohio were Logan and his family; but I have reason to believe that this report was unfounded.

Within a few days after the transaction above mentioned, a party of Indians were killed at Yellow Creek. But I must do the memory 3 of Captain Cresap the justice to say that I do not believe that he was present at the killing of the Indians at Yellow Creek. But there is not the least doubt in my mind, that the massacre at Yellow Creek was brought on by the two transactions first stated.

All the transactions, which I have related happened in the latter end of April 1774; and there can scarcely be a doubt that they were the cause of the war which immediately followed, commonly called Dunmore's War.

I am with much esteem, yours, &c.,

EBENEZER ZANE.

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*The certificate of William Huston of Washington county, in the State of Pennsylvania, communicated by David Riddick, Esquire, Prothonotary of Washington county, Pennsylvania; who in the letter enclosing it says "Mr. William Huston is a man of established reputation in point of integrity."*

I William Huston of Washington county, in the State of Pennsylvania, do hereby certify to whom it may concern, that in the year 1774, I resided at Catfishes camp, on the main path from Wheeling to Redstone; that Michael Cresap, who resided on or near the Potomac river, on his way up from the river Ohio, at the head of a party of armed men, lay some time at my cabin.

I had previously heard the report of Mr. Cresap having killed 2 some Indians, said to be the relations of "Logan" an Indian Chief. In a variety of conversations with several of Cresap's party, they boasted of the deed; and that in the presence of their chief. They acknowledged they had fired first on the Indians. They had with them one man on a litter, who was in the skirmish.

I do further certify that, from what I learned from the party themselves, I then formed the opinion, and have not had any reason to change the opinion since, that the killing, on the part of the whites, was what I deem the grossest murder. I further certify that some of
3 the party, who afterwards killed some women and other Indians at Baker's bottom, also lay at my cabin, on their march to the interior part of the country; they had with them a little girl, whose life had been spared by the interference of some more humane than the rest. If necessary I will make affidavit to the above to be true. Certified at Washington, this 18th day of April, Anno Domini, 1798.

WILLIAM HUSTON.

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*The certificate of Jacob Newland, of Shelby County, Kentucky, communicated by the Honorable Judge Innes, of Kentucky.*

In the year 1774, I lived on the waters of Short Creek, a branch of the Ohio, twelve miles above Wheeling. Some time in June or in July of that year, Capt. Michael Cresap raised a party of men, and came out under Col. M'Daniel, of Hampshire County, Virginia, who commanded a detachment against the Wappotommaka towns on the Muskinghum. I met with Capt. Cresap, at Redstone fort, and entered his company. Being very well acquainted with him, we conversed freely; and he, among other conversations, informed me several times of falling in
2 with some Indians on the Ohio some distance below the mouth of Yellow Creek, and killed two or three of them; and that this murder
3 was before that of the Indians by Great-house and others, at Yellow Creek. I do not recollect the reason which Capt. Cresap assigned for committing the act. but never understood that the Indians gave any offence. Certified under my hand this 15th day of November, 1799, being an inhabitant of Shelby county, and State of Kentucky.

JACOB NEWLAND.

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*The Certificate of John Anderson, a merchant in Fredericksburg, Virginia; communicated by Mann Page, Esquire, of Mansfield, near Fredericksburg, who in the letter accompanying it, says, "Mr. John Anderson has for many years past been settled in Fredericksburg, in the mercantile line. I have known him in prosperous and adverse situations. He has always shown the greatest degree of Equanimity, his honesty and veracity are unimpeachable. These things can be attested by all the respectable part of the town and neighborhood of Fredericksburg."*

Mr. John Anderson, a merchant in Fredericksburg, says, that in the year 1774, being a trader in the Indian country, he was at Pittsburg, to which place he had a cargo brought up the river in a boat navigated by a Delaware Indian and a white man. That on their return down the river, with a cargo belonging to Messrs. Butler, Michael 1
Cresap fired on the boat, and killed the Indian, after which two men of the name of Gatewood, and others of the name of Tumblestone,[1] who lived on the opposite side of the river from the Indians, 3
with whom they were on the most friendly terms, invited a party of them to come over and drink with him; and that, when the Indians were drunk, they murdered them to the number of six, among whom was Logan's mother. That five other Indians uneasy at the absence 4
of their friends, came over the river to inquire after them; when they were fired upon, and two were killed, and the others wounded. This was the origin of the war.

I certify the above to be true to the best of my recollection.

Attest DAVID BLAIR, 30th June, 1798. JOHN ANDERSON.

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*The Deposition of James Chambers, communicated by David Riddick, Esquire, Prothonotary of Washington county, Pennsylvania, who, in the letter enclosing it, shows that he entertains the most perfect confidence in the truth of Mr. Chambers.*

WASHINGTON COUNTY, *ss.*

Personally came before me Samuel Shannon, Esquire, one of the Commonwealth Justices for the County of Washington in the State of Pennsylvania, James Chambers, who, being sworn according to law, deposeth and saith that in the spring of the year 1774, he resided on the frontier near Baker's bottom on the Ohio; that he had an intimate companion, with whom he sometimes lived, named Edward King; that a report reached them that Michael Cresap had killed some 2
Indians near Grave Creek, friends to an Indian, known by the name 3
of "Logan;" that other of his friends, following down the river, having received intelligence, and fearing to proceed, lest Cresap might fall in with them, encamped near the mouth of Yellow Creek, opposite Baker's bottom; that Daniel Great-house had determined to kill them; had made the secret known to the deponent's companion, King; that the deponent was earnestly solicited to be of the party, and, as an inducement, was told that they would get a great deal of plunder; and

[1] The proper pronunciation of Tomlinson, which was the real name,

further, that the Indians would be made drunk by Baker, and that little danger would follow the expedition. The deponent refused having any hand in killing unoffending people. His companion, King, went with Great-house, with divers others, some of whom had been collected at a considerable distance under an idea that Joshua Baker's family was in danger from the Indians, as war had been commenced between Cresap and them already; that Edward King, as well as others of the party, did not conceal from the deponent the most minute circumstances of this affair; they informed him that Great-house, concealing his people, went over to the Indian encampments and counted their number, and found that they were too large a party to attack with his strength; that he then requested Joshua Baker, when any of them came to his house, (which they had been in the habit of,) to give them what rum they could drink, and to let him know when they were in a proper train, and that he would then fall on them; that accordingly they found several men and women at Baker's house; that one of these women had cautioned Great-house, when over in the Indian camp, that he had better return home, as the Indian men were drinking, and that having heard of Cresap's attack on their relations down the river, they were angry, and, in a friendly manner, told him to go home. Great-house, with his party, fell on them, and killed all except a little girl, which the deponent saw with the party after the slaughter; that the Indians in the camp hearing the firing, manned two canoes, supposing their friends at Baker's to be attacked, as was supposed; the party under Great-house prevented their landing by a well-directed fire, which did execution in the canoes; that Edward King showed the deponent one of the scalps. The deponent further saith, that the settlements near the river broke up, and he the deponent immediately repaired to Catfish's camp, and lived some time with Mr. William Huston; that not long after his arrival, Cresap, with his party, returning from the Ohio, came to Mr. Huston's and tarried some time; that in various conversations with the party, and in particular with a Mr. Smith, who had one arm only, he was told that the Indians were acknowledged and known to be Logan's friends which they had killed, and that he heard the party say, that Logan would probably avenge their deaths.

They acknowledged that the Indians passed Cresap's encampment on the bank of the river in a peaceable manner, and encamped below him; that they went down and fired on the Indians and killed several; that the survivors flew to their arms and fired on Cresap, and wounded one man, whom the deponent saw carried on a litter by the party; that the Indians killed by Cresap were not only Logan's

relations, but of the women killed at Baker's one was said and generally believed to be Logan's sister. The deponent further saith, that on the relation of the attack by Cresap on the unoffending Indians, he exclaimed in their hearing, that it was an atrocious murder; on which Mr. Smith threatened the deponent with the tomahawk; so that he was obliged to be cautious, fearing an injury, as the party appeared to have lost, in a great degree, sentiments of humanity as well as the effects of civilization. Sworn and subscribed at Washington, the 20th day of April, Anno Domini 1798.

Before SAMUEL SHANNON. JAMES CHAMBERS.

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WASHINGTON COUNTY, *ss.*

I, David Reddick, prothonotary of the court of common pleas, SEAL. for the county of Washington in the State of Pennsylvania, do certify that Samuel Shannon, Esq., before whom the within affidavit was made, was, at the time thereof, and still is, a justice of the peace in and for the county of Washington aforesaid; and that full credit is due to all his judicial acts as such as well in courts of justice as thereout.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Washington, the 26th day of April, Anno Dom. 1798.

DAVID REDDICK.

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*The certificate of Charles Polke, of Shelby County, in Kentucky, communicated by the Hon. Judge Innes, of Kentucky, who in the letter enclosing it, together with Newland's certificate, and his own declaration of the information given him by Baker, says, "I am well acquainted with John Newland, he is a man of integrity. Charles Polke and Joshua Baker both support respectable characters."*

About the latter end of April or beginning of May, 1774, I lived on the waters of Cross creek, about sixteen miles from Joshua Baker, who lived on the Ohio, opposite the mouth of Yellow Creek. A number of persons collected at my house, and proceeded to the said Baker's and murdered several Indians, among whom was a woman said to 3 be the sister of the Indian chief, Logan. The principal leader of the party was Daniel Great-house. To the best of my recollection the

cause which gave rise to the murder was a general idea that the Indians were meditating an attack on the frontiers. Capt. Michael Cresap was not of the party; but I recollect that some time before the perpe-
2 tration of the above fact it was currently reported that Capt. Cresap had murdered some Indians on the Ohio, one or two, some distance below Wheeling.

Certified by me, an inhabitant of Shelby county and State of Kentucky, this 15th day of November, 1799. CHARLES POLKE.

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*The Declaration of the Hon. Judge Innes, of Frankfort, in Kentucky.*

On the 14th of November, 1799, I accidentally met upon the road Joshua Baker, the person referred to in the certificate signed by
3 Polke, who informed me that the murder of the Indians in 1774, opposite the mouth of Yellow Creek, was perpetrated at his house by thirty-two men, led on by Daniel Great-house; that twelve were killed and six or eight wounded; among the slain was a sister and other relations of the Indian chief, Logan. Baker says, Captain Michael Cresap was not of the party; that some days preceding the murder
1 at his house two Indians left him and were on their way home; that they fell in with Capt. Cresap and a party of land improvers on the Ohio, and were murdered, if not by Cresap himself, with his approbation; he being the leader of the party, and that he had this information from Cresap. HARRY INNES.

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*The Declaration of William Robinson.*

William Robinson, of Clarksburg, in the county of Harrison, and State of Virginia, subscriber to these presents, declares that he was, in the year 1774, a resident on the west fork of Monongahela river, in the county then called West Augusta, and being in his field on the 12th of July, with two other men, they were surprised by a party of eight Indians, who shot down one of the others and made himself and the remaining one prisoners; this subscriber's wife and four children having been previously conveyed by him for safety to a fort about twenty-four miles off; that the principal Indian of the party which took them was Captain Logan; that Logan spoke English well, and very soon manifested a friendly disposition to this subscriber, and told him to be of good heart, that he would not be killed, but must go with him to his

town, where he would probably be adopted in some of their families; but above all things, that he must not attempt to run away; that in the course of the journey to the Indian town he generally endeavored to keep close to Logan, who had a great deal of conversation with him, always encouraging him to be cheerful and without fear; for that he would not be killed, but should become one of them; and constantly impressing on him not to attempt to run away; that in these conversations he always charged Capt. Michael Cresap with the murder of his family; that on his arrival in the town, which was on the 18th of July, he was tied to a stake and a great debate arose whether he should not be burnt; Logan insisted on having him adopted, while others contended to burn him; that at length Logan prevailed, tied a belt of wampum round him as the mark of adoption, loosed him from the post and carried him to the cabin of an old squaw, where Logan pointed out a person who he said was this subscriber's cousin; and he afterwards understood that the old woman was his aunt, and two others his brothers, and that he now stood in the place of a warrior of the family who had been killed at Yellow Creek; that about three days after this Logan brought him a piece of paper, and told him he must write a letter for him, which he meant to carry and leave in some house where he should kill somebody; that he made ink with gun powder, and the subscriber proceeded to write the letter by his direction, addressing Captain Michael Cresap in it, and that the purport of it was, to ask "why he had killed his people? That some time before they had killed his people at some place, (the name of which the subscriber forgets,) which he had forgiven; but since that he had killed his people again at Yellow Creek, and taken his cousin, a little girl, prisoner; that therefore he must war against the whites; but that he would exchange the subscriber for his cousin." And signed it with Logan's name, which letter Logan took and set out again to war; and the contents of this letter, as recited by the subscriber, calling to mind that stated by Judge Innes to have been left, tied to a war club, in a house where a family was murdered, and that being read to the subscriber, he recognizes it, and declares he verily believes it to have been the identical letter which he wrote, and supposes he was mistaken in stating as he has done before from memory, that the offer of exchange was proposed in the letter; that it is probable that it was only promised him by Logan, but not put in the letter; while he was with the old woman, she repeatedly endeavored to make him sensible that she had been of the party at Yellow Creek, and, by signs, showed him how they decoyed her friends over the river to drink, and when they were reeling and tumbling about, tomahawked them all, and that whenever she entered on

this subject she was thrown into the most violent agitations, and that he afterwards understood that, amongst the Indians killed at Yellow Creek, was a sister of Logan, very big with child, whom they ripped open, and stuck on a pole; that he continued with the Indians till the month of November, when he was released in consequence of the peace made by them with Lord Dunmore; that, while he remained with them, the Indians in general were very kind to him; and especially those who were his adopted relations; but above all, the old woman and family in which he lived, who served him with everything in their power, and never asked, or even suffered him to do any labor, seeming in truth to consider and respect him as the friend they had lost. All which several matters and things, so far as they are stated to be of his own knowledge, this subscriber solemnly declares to be true, and so far as they are stated on information from others, he believes them to be true. Given and declared under his hand at Philadelphia, this 28th day of February, 1800. WILLIAM ROBINSON.

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*The deposition of Colonel William M'Kee, of Lincoln County, Kentucky, communicated by the Hon. John Brown, one of the Senators in Congress from Kentucky.*

Colonel William M'Kee of Lincoln county, declareth, that in autumn, 1774, he commanded as a captain in the Bottetourt Regiment under Colonel Andrew Lewis, afterwards General Lewis; and fought in the battle at the mouth of Kanhaway, on the 10th of October in that year. That after the battle, Colonel Lewis marched the militia across the Ohio, and proceeded towards the Shawnee towns on Sciota; but before they reached the towns, Lord Dunmore, who was Commander-in-Chief of the army, and had, with a large part thereof, been up the Ohio about Hockhockin, when the battle was fought, overtook the militia, and informed them of his having since the battle concluded a treaty with the Indians; upon which the whole army returned.

And the said William declareth that, on the evening of that day on which the junction of the troops took place, he was in company with Lord Dunmore and several of his officers, and also conversed with several who had been with Lord Dunmore at the treaty; said William, on that evening, heard repeated conversations concerning an extraordinary speech at the treaty, or sent there by a chieftain of the Indians named Logan, and heard several attempts at a rehearsal of it. The speech as rehearsed excited the particular attention of said William, and the most striking members of it were impressed on his memory.

And he declares that when Thomas Jefferson's "Notes on Virginia" were published, and he came to peruse the same, he was struck with the speech of Logan as there set forth, as being substantially the same, and accordant with the speech he heard rehearsed in the camp as aforesaid. Signed, WILLIAM M'KEE.

DANVILLE, December 18th, 1799.

We certify that Colonel William M'Kee this day signed the original certificate, of which the foregoing is a true copy, in our presence.

JAMES SPEED, Junior.
J. H. DEWEES.

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*The Certificate of the Honorable Stevens Thompson Mason, one of the Senators in Congress from the State of Virginia.*

"Logan's Speech, delivered at the Treaty, after the battle in which Colonel Lewis was killed in 1774."

[Here follows a copy of the speech agreeing verbatim with that printed in Dixon and Hunter's Virginia Gazette of February 4, 1775, under the Williamsburg head. At the foot is this certificate.]

"The foregoing is a copy taken by me, when a boy, at school, in the year 1775, or at farthest in 1776, and lately found in an old pocket-book, containing papers and manuscripts of that period.

"January 20th, 1798. STEVENS THOMPSON MASON."

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*A copy of Logan's speech, given by the late General Mercer, who fell in the battle of Trenton, January 1776, to Lewis Willis, Esquire, of Fredericksburg, in Virginia, upwards of twenty years ago, (from the date of February 1798,) communicated through Mann Page, Esquire.*

"The speech of Logan, a Shawanese chief, to Lord Dunmore."

[Here follows a copy of the speech, agreeing verbatim with that in the Notes on Virginia.]

A copy of Logan's speech from the Notes on Virginia having been sent to Captain Andrew Rodgers, of Kentucky, he subjoined the following certificate:

In the year 1774 I was out with the Virginia Volunteers, and was in the battle at the mouth of Canhawee, and afterwards proceeded over

the Ohio to the Indian towns. I did not hear Logan make the above speech; but from the unanimous accounts of those in camp, I have reason to think that said speech was delivered to Dunmore. I remember to have heard the very things contained in the above speech, related by some of our people in camp at that time.

ANDREW RODGERS.

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*The declaration of Mr. John Heckewelder, for several years a missionary from the society of Moravians, among the western Indians.*

In the spring of the year 1774, at a time when the interior part of the Indian country all seemed peace and tranquil, the villagers on the Muskingum were suddenly alarmed by two runners (Indians), who reported "that the Big Knife (Virginians) had attacked the Mingo settlement, on the Ohio, and butchered even the women with their children in their arms, and that Logan's family were among the slain." A day or two after this several Mingoes made their appearance; among whom were one or two wounded, who had in this manner effected their escape. Exasperated to a high degree, after relating the particulars of this transaction, (which for humanity's sake I forbear to mention,) after resting some time on the treachery of the Big Knives, of their barbarity to those who are their friends, they gave a figurative description of the perpetrators; named Cresap as having been at the head of this murderous act. They made mention of nine being killed, and two wounded; and were prone to take revenge on any person of a white color; for which reason the missionaries had to shut themselves up during their stay. From this time terror daily increased. The exasperated friends and relations of these murdered women and children, with the nations to whom they belonged, passed and repassed through the villages of the quiet Delaware towns, in search of white people, making use of the most abusive language to these (the Delawares), since they would not join in taking revenge. Traders had either to hide themselves, or try to get out of the country the best way they could. And even at this time, they yet found such true friends among the Indians, who, at the risk of their own lives, conducted them, with the best part of their property, to Pittsburg; although, (shameful to relate!) these benefactors were, on their return from this mission, waylaid, and fired upon by whites, while crossing Big Beaver in a canoe, and had one man, a Shawanese, named Silverheels, (a man of note in his nation,) wounded in the body. This exasperated the Shaw-

anese so much, that they, or at least a great part of them, immediately took an active part in the cause; and the Mingoes, (nearest connected with the former.) became unbounded in their rage. A Mr. Jones, son to a respectable family of this neighborhood (Bethlehem), who was then on his passage up Muskinghum, with two other men, was fortunately espied by a friendly Indian woman, at the falls of Muskinghum; who through motives of humanity alone, informed Jones of the nature of the times, and that he was running right in the hands of the enraged; and put him on the way, where he might perhaps escape the vengeance of the strolling parties. One of Jones's men, fatigued by travelling in the woods, declared he would rather die than remain longer in this situation; and hitting accidentally on a path, he determined to follow the same. A few hundred yards decided his fate. He was met by a party of about fifteen Mingoes, (and as it happened, almost within sight of White Eyes town,) murdered, and cut to pieces; and his limbs and flesh stuck up on the bushes. White Eyes, on hearing the scalp halloo, ran immediately out with his men, to see what the matter was; and finding the mangled body in this condition, gathered the whole and buried it. But next day when some of the above party found on their return the body interred, they instantly tore up the ground, and endeavored to destroy or scatter about, the parts at a greater distance. White Eyes, with the Delawares, watching their motions, gathered and interred the same a second time. The war party finding this out, ran furiously into the Delaware village, exclaiming against the conduct of these people, setting forth the cruelty of Cresap towards women and children, and declaring at the same time, that they would, in consequence of this cruelty, serve every white man they should meet with in the same manner. Times grew worse and worse, war parties went out and took scalps and prisoners, and the latter, in hopes it might be of service in saving their lives, exclaimed against the barbarous act which gave rise to these troubles and against the perpetrators. The name of Great-house was mentioned as having been accomplice to Cresap. So detestable became the latter name among the Indians, that I have frequently heard them apply it to the worst of things; also in quieting or stilling their children, I have heard them say, hush! Cresap will fetch you; whereas otherwise, they name the Owl. The warriors having afterwards bent their course more toward the Ohio, and down the same, peace seemed with us already on the return; and this became the case soon after the decided battle fought on the Kanhaway. Traders, returning now into the Indian country again, related the story of the above-mentioned massacre, *after the same manner, and with the same words*, we have heard it related hitherto. So the report

remained, and was believed by all who resided in the Indian country. So it was represented numbers of times, in the peaceable Delaware towns, by the enemy. So the Christian Indians were continually told they would one day be served. With this impression, a petty chief hurried all the way from Wabash in 1779, to take his relations (who were living with the peaceable Delawares near Coshachking) out of the reach of the Big Knives, in whose friendship he never more would place any confidence. And when this man found that his numerous relations would not break friendship with the Americans, nor be removed, he took two of his relations (women) off by force, saying, "The whole crop should not be destroyed; I will have seed out of it for a new crop;" alluding to, and repeatedly reminding those of the family of Logan, who he said had been real friends to the whites, and yet were cruelly murdered by them.

In Detroit, where I arrived the same Spring, the report respecting the murder of the Indians on the Ohio (amongst whom was Logan's family) was the same as related above; and on my return to the United States in the fall of 1786, and from that time, whenever and wherever in my presence, this subject was the topic of conversation, I found the report still the same; viz. that a person, bearing the name of Cresap, was the author, or perpetrator of this deed.

Logan was the second son of Shikellemus, a celebrated chief of the Cayuga nation. This chief, on account of his attachment to the English government, was of great service to the country, having the confidence of all the Six Nations, as well as that of the English, he was very useful in settling disputes, &c., &c. He was highly esteemed by Conrad Weisser, Esq., (an officer for government in the Indian department), with whom he acted conjunctly, and was faithful unto his death. His residence was at Shamokin, where he took great delight in acts of hospitality to such of the white people whose business led them that way.[1] His name and fame were so high on record, that Count Zinzendorf, when in this country in 1742, became desirous of seeing him, and actually visited him at his house in Shamokin.[2] About the year 1772, Logan was introduced to me by an Indian friend, as son to the late reputable chief Shikellemus, and as a friend to the white people. In the course of conversation I thought him a man of superior talents

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[1] The preceding account of Shikellemus, (Logan's father,) is copied from manuscripts of the Rev. C. Pyrlœus, written between the years 1741 and 1748.

[2] See G. H. Hoskiel's history of the Mission of the United Brethren, &c. Part II. Chap. 11, Page 31.

than Indians generally were. The subject turning on vice and immorality, he confessed his too great share of this, especially his fondness for liquor. He exclaimed against the white people for imposing liquors upon the Indians; he otherwise admired their ingenuity; spoke of gentlemen, but observed the Indians unfortunately had but few of these as their neighbors, &c. He spoke of his friendship to the white people, wished always to be a neighbor to them, intended to settle on the Ohio, below Big Beaver; was (to the best of my recollection) then encamped at the mouth of this river, (Beaver,) urged me to pay him a visit, &c. Note. I was then living at the Moravian town on this river, in the neighborhood of Cuskuskee. In April, 1773, while on my passage down the Ohio for Muskinghum, I called at Logan's settlement; where I received every civility I could expect from such of the family as were at home.

Indian reports concerning Logan, after the death of his family, ran to this; that he exerted himself during the Shawanese war, (then so called,) to take all the revenge he could, declaring he had lost all confidence in the white people. At the time of negotiation, he declared his reluctance in laying down the hatchet, not having (in his opinion) yet taken ample satisfaction; yet, for the sake of the nation, he would do it. His expressions, from time to time, denoted a deep melancholy. Life (said he) had become a torment to him: he knew no more what pleasure was: he thought it had been better if he had never existed, &c., &c. Report further states, that he became in some measure delirious, declared he would kill himself, went to Detroit, drank very freely, and did not seem to care what he did, and what became of himself. In this condition he left Detroit, and on his way between that place and Miami was murdered. In October, 1781, (while as prisoner on my way to Detroit,) I was shown the spot where this should have happened. Having had an opportunity since last June of seeing the Rev. David Zeisberger, senior, missionary to the Delaware nation of Indians, who had resided among the same on Muskinghum, at the time when the murder was committed on the family of Logan, I put the following questions to him: first, who he had understood it was that had committed the murder on Logan's family? and secondly, whether he had any knowledge of a speech sent to Lord Dunmore by Logan, in consequence of this affair, &c. To which Mr. Zeisberger's answer was: That he had, from that time when this murder was committed to the present day, firmly believed the common report (which he had never heard contradicted) viz., that one Cresap was the author of the massacre; or that it was committed by his orders; and that he had known Logan as a boy, had frequently seen him from that time,

and doubted not in the least, that Logan had sent such a speech to Lord Dunmore on this occasion, as he understood from me had been published; that expressions of that kind from Indians were familiar to him; that Logan in particular was a man of quick comprehension, good judgment and talents. Mr. Zeisberger has been a missionary upwards of fifty years; his age is about eighty; speaks both the language of the Onondagoes and the Delawares; resides at present on the Muskinghum, with his Indian congregation; and is beloved and respected by all who are acquainted with him.

JOHN HECKEWELDER.

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*From this testimony the following historical statement results:*

In April or May, 1774, a number of people being engaged in looking out for settlements on the Ohio, information was spread among them, that the Indians had robbed some of the land-jobbers, as those adventurers were called. Alarmed for their safety, they collected together at Wheeling Creek. [1]Hearing there that there were two Indians and some traders a little above Wheeling, Captain Michael Cresap, one of the party, proposed to waylay and kill them. The proposition, though opposed, was adopted. A party went up the river, with Cresap at their head, and killed the two Indians.

[2]The same afternoon it was reported that there was a party of Indians on the Ohio, a little below Wheeling. Cresap and his party immediately proceeded down the river, and encamped on the bank. The Indians passed him peaceably, and encamped at the mouth of Grave Creek, a little below. Cresap and his party attacked them, and killed several. The Indians returned the fire, and wounded one of Cresap's party. Among the slain of the Indians were some of Logan's family. Colonel Zane indeed expresses a doubt of it; but it is affirmed by Huston and Chambers. Smith, one of the murderers, said they were known and acknowledged to be Logan's friends, and the party themselves generally said so; boasted of it in presence of Cresap; pretended no provocation; and expressed their expectations that Logan would probably avenge their deaths.

Pursuing these examples. [3]Daniel Great-house, and one Tomlinson,

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[1] First murder of the two Indians by Cresap.

[2] Second murder on Grave Creek.

[3] Massacre at Baker's Bottom, opposite Yellow Creek, by Great-house.

who lived on the opposite side of the river from the Indians, and were in habits of friendship with them, collected, at the house of Polke, on Cross Creek, about 16 miles from Baker's Bottom, a party of 32 men. Their object was to attack a hunting encampment of Indians, consisting of men, women, and children, at the mouth of Yellow Creek, some distance above Wheeling. They proceeded, and when arrived near Baker's Bottom, they concealed themselves, and Great-house crossed the river to the Indian camp. Being among them as a friend, he counted them, and found them too strong for an open attack with his force. While here, he was cautioned by one of the women not to stay, for that the Indian men were drinking, and having heard of Cresap's murder of *their relations* at Grave Creek, were angry, and she pressed him in a friendly manner, to go home; whereupon, after inviting them to come over and drink, he returned to Baker's, which was a tavern, and desired that when any of them should come to his house he would give them as much rum as they would drink. When his plot was ripe, and a sufficient number of them were collected at Baker's, and intoxicated, he and his party fell on them and massacred the whole, except a little girl, whom they preserved as a prisoner. Among these was the very woman who had saved his life, by pressing him to retire from the drunken wrath of her friends, when he was spying their camp at Yellow Creek. Either she herself, or some other of the murdered women, was the sister of Logan, very big with child, and inhumanly and indecently butchered; and there were others of his relations who fell here.

The party on the other side of the river,[1] alarmed for their friends at Baker's, on hearing the report of the guns, manned two canoes and sent them over. They were received, as they approached the shore, by a well-directed fire from Great-house's party, which killed some, wounded others, and obliged the rest to put back. Baker tells us there were twelve killed, and six or eight wounded.

This commenced the war, of which Logan's war-club and note left in the house of a murdered family, was the notification. In the course of it, during the ensuing summer, a great number of innocent men, women, and children, fell victims to the tomahawk and scalping knife of the Indians, till it was arrested in the autumn following by the battle at Point Pleasant, and the pacification with Lord Dunmore, at which the speech of Logan was delivered.

Of the genuineness of that speech nothing need be said. It was known to the camp where it was delivered; it was given out by Lord Dunmore and his officers; it ran through the public papers of these

[1] Fourth murder, by Great-house.

States; was rehearsed as an exercise at schools; published in the papers and periodical works of Europe; and all this, a dozen years before it was copied into the Notes on Virginia. In fine, General Gibson concludes the question for ever, by declaring that he received it from Logan's hand, delivered it to Lord Dunmore, translated it for him, and that the copy in the Notes on Virginia is a faithful copy.

The popular account of these transactions, as stated in the Notes on Virginia, appears, on collecting exact information, imperfect and erroneous in its details. It was the belief of the day; but how far its errors were to the prejudice of Cresap, the reader will now judge. That he, and those under him, murdered two Indians above Wheeling; that they murdered a large number at Grave Creek, among whom were a part of the family and relations of Logan, cannot be questioned; and as little that this led to the massacre of the rest of the family at Yellow Creek. Logan imputed the whole to Cresap, in his war-note and peace-speech: the Indians generally imputed it to Cresap: Lord Dunmore and his officers imputed it to Cresap: the country, with one accord, imputed it to him: and whether he were innocent, let the universal verdict now declare.

*The declaration of John Sappington, received after the publication of the preceding Appendix.*

I, JOHN SAPPINGTON, declare myself to be intimately acquainted with all the circumstances respecting the destruction of Logan's family, and do give in the following narrative, a true statement of that affair:

"Logan's family (if it was his family) was not killed by Cresap, nor with his knowledge, nor by his consent, but by the Great-houses and their associates. They were killed 30 miles above Wheeling, near the mouth of Yellow Creek. Logan's camp was on one side of the river Ohio, and the house, where the murder was committed, opposite to it on the other side. They had encamped there only four or five days, and during that time had lived peaceably and neighbourly with the whites on the opposite side, until the very day the affair happened. A little before the period alluded to, letters had been received by the inhabitants from a man of great influence in that country, and who was then, I believe, at Capteener, informing them that war was at hand, and desiring them to be on their guard. In consequence of those letters and other rumors of the same import, almost all the inhabitants fled for safety into the settlements. It was at the house of one Baker the murder was committed. Baker was a man who sold rum, and the Indians had made frequent visits at his house, induced, probably, by their fondness for that liquor. He had been particularly desired by Cresap to remove and take away his rum, and he was actually preparing to move at the time of the murder. The evening before, a squaw came over to Baker's house, and by her crying seemed to be in great distress. The cause of her uneasiness being asked, she refused to tell; but getting Baker's wife alone, she told her that the Indians were going to kill her and all her family the next day, that she loved her, did not wish her to be killed, and therefore told her what was intended, that she might save herself. In consequence of this information, Baker got a number of men, to the amount of twenty-one, to come to his house, and they were all there before morning. A council was held, and it was determined that the men should lie concealed in the back apartment; that if the Indians did come, and behaved themselves peaceably, they should not be molested; but if not, the men were to show themselves, and act accordingly. Early in the morning, seven Indians, four men and three squaws, came over. Logan's brother was one of them. They immediately got rum, and all, except Logan's brother, became very much intoxicated. At this time all the men were con-

cealed, except the man of the house, Baker, and two others who staid out with him. Those Indians came unarmed. After some time Logan's brother took down a coat and hat, belonging to Baker's brother-in-law, who lived with him, and put them on, and setting his arms a-kimbo, began to strut about, till at length coming up to one of the men, he attempted to strike him, saying, "White man, son of a bitch." The white man, whom he treated thus, kept out of his way for some time; but growing irritated, he jumped to his gun, and shot the Indian as he was making to the door with the coat and hat on him. The men who lay concealed then rushed out, and killed the whole of them, excepting one child, which I believe is alive yet. But before this happened, one with two, the other with five Indians, all naked, painted, and armed completely for war, were discovered to start from the shore on which Logan's camp was. Had it not been for this circumstance, the white men would not have acted as they did; but this confirmed what the squaw had told before. The white men, having killed, as aforesaid, the Indians in the house, ranged themselves along the bank of the river, to receive the canoes. The canoe with the two Indians came near, being the foremost. Our men fired upon them and killed them both. The other canoe then went back. After this, two other canoes started, the one containing eleven, the other seven, Indians, painted and armed as the first. They attempted to land below our men, but were fired upon; had one killed, and retreated, at the same time firing back. To the best of my recollection there were three of the Great-houses engaged in this business. This is a true representation of the affair from beginning to end. I was intimately acquainted with Cresap, and know he had no hand in that transaction. He told me himself afterwards, at Redstone Old Fort, that the day before Logan's people were killed, he, with a small party, had an engagement with a party of Indians on Capteener, about forty-four miles lower down. Logan's people were killed at the mouth of Yellow Creek, on the 24th of May, 1774; and the 23d, the day before, Cresap was engaged as already stated. I know, likewise, that he was generally blamed for it, and believed by all who were not acquainted with the circumstances to have been the perpetrator of it. I know that he despised and hated the Great-houses ever afterwards on account of it. I was intimately acquainted with General Gibson, and served under him during the late war, and I have a discharge from him now lying in the land-office at Richmond, to which I refer any person for my character, who might be disposed to scruple my veracity. I was likewise at the treaty held by Lord Dunmore with the Indians, at Chelicothe. As for the speech said to have been delivered by Logan

on that occasion, it might have been, or might not, for anything I know, as I never heard of it till long afterwards. I do not believe that Logan had any relations killed, except his brother. Neither of the squaws who were killed was his wife. Two of them were old women, and the third, with her child, which was saved, I have the best reason in the world to believe was the wife and child of General Gibson. I know he educated the child, and took care of it, as if it had been his own. Whether Logan had a wife or not, I can't say; but it is probable that as he was a chief, he considered them all as his people. All this I am ready to be qualified to at any time.

Attest, SAMUEL M'KEE, Junr.

JOHN SAPPINGTON.

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MADISON COUNTY, Feb. 13th, 1800.

I do certify further, that the above-named John Sappington told me, at the same time and place at which he gave me the above narrative, that he himself was the man who shot the brother of Logan in the house, as above related, and that he likewise killed one of the Indians in one of the canoes, which came over from the opposite shore.

He likewise told me, that Cresap never said an angry word to him about the matter, although he was frequently in company with Cresap, and indeed had been, and continued to be, in habits of intimacy with that gentleman, and was always befriended by him on every occasion. He further told me, that after they had perpetrated the murder, and were flying into the settlement, he met with Cresap (if I recollect right, at Redstone Old Fort); and gave him a scalp, a very large fine one, as he expressed it, and adorned with silver. This scalp, I think he told me, was the scalp of Logan's brother; though as to this I am not absolutely certain.

Certified by

SAMUEL M'KEE, Junr.

# A MANUAL

OF

# PARLIAMENTARY PRACTICE.

# INTRODUCTION.

THE Constitution of the United States, establishing a Legislature for the Union under certain forms, authorizes each branch of it "to determine the rules of its own proceedings." The Senate have accordingly formed some rules for its own government: but those going only to few cases, they have referred to the decision of their President, without debate and without appeal, all questions of order arising either under their own rules, or where they have provided none. This places under the discretion of the President a very extensive field of decision, and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the House. The President must feel, weightily and seriously, this confidence in his discretion: and the necessity of recurring, for its government, to some known system of rules, that he may neither leave himself free to indulge caprice or passion, nor open to the imputation of them. But to what system of rules is he to recur, as supplementary to those of the Senate? To this there can be but one answer: to the systems of regulations adopted by the government of some one of the parliamentary bodies within these States, or of that which has served as a prototype to most of them. This last is the model which we have studied; while we are little acquainted with the modifications of it in our several States. It is deposited, too, in publications possessed by many, and open to all. Its rules are probably as wisely constructed for governing the debates of a considerative body, and obtaining its true sense, as any which can become known to us; and the acquiescence of the Senate hitherto under the references to them, has given them the sanction of their approbation.

Considering, therefore, the law of proceedings in the Senate as composed of the precepts of the Constitution, the regulations of the Senate, and where these are silent, of the rules of Parliament, I have here endeavored to collect and digest so much of these as is called for in ordinary practice, collating the parliamentary with the senatorial rules, both where they agree and where they vary. I have done this, as well to have them at hand for my own government, as to deposit with the Senate the standard by which I judge and am willing to be judged. I could not doubt the necessity of quoting the sources of my informa-

tion; among which Mr. Hatsel's most valuable book is pre-eminent; but as he has only treated some general heads, I have been obliged to recur to other authorities, in support of a number of common rules of practice to which his plan did not descend. Sometimes each authority cited supports the whole passage. Sometimes it rests on all taken together. Sometimes the authority goes only to a part of the text, the residue being inferred from known rules and principles. For some of the most familiar forms, no written authority is or can be quoted; no writer having supposed it necessary to repeat what all were presumed to know. The statement of these must rest on their notoriety.

I am aware, that authorities can often be produced in opposition to the rules which I lay down as parliamentary. An attention to dates will generally remove their weight. The proceedings of Parliament in ancient times, and for a long while, were crude, multiform, and embarrassing. They have been, however, constantly advancing towards uniformity and accuracy; and have now obtained a degree of aptitude to their object, beyond which little is to be desired or expected.

Yet I am far from the presumption of believing, that I may not have mistaken the parliamentary practice in some cases; and especially in those minor forms, which, being practised daily, are supposed known to everybody, and therefore have not been committed to writing. Our resources in this quarter of the globe, for obtaining information on that part of the subject, are not perfect. But I have begun a sketch, which those who come after me will successively correct and fill up, till a code of rules shall be formed for the use of the Senate, the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality.

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NOTE.

The rules and practices peculiar to the Senate are printed in small type. Those of Parliament are in large.

# A MANUAL OF PARLIAMENTARY PRACTICE.[1]

## IMPORTANCE OF RULES.

### SECTION I.

#### THE IMPORTANCE OF ADHERING TO RULES.

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, "It was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of administration and those who acted with the majority of

[1] [Judge Wythe.] Philadelphia, February 28, 1800.

My Dear Sir:—I know how precious your time is, and how exclusively you devote it to the duties of your office, yet I venture to ask a few hours or minutes of it on motives of public service, as well as private friendship. I will explain the occasion of the application. You recollect enough of the old Congress to remember that their mode of managing the business of the House was not only unparliamentary, but that the forms were so awkward and inconvenient that it was impossible sometimes to get at the true sense of the majority. The House of Representatives of the United States are now pretty much in the same situation. In the Senate it is in our power to get into a better way; our ground is this: The Senate have established a few rules for their government, and have subjected the decisions on these and on *all other points of order* without debate, and without appeal, to the judgment of their President, he, for his own sake, as well as theirs, must prefer recurring to some system of rules ready formed; and there can be no question that the Parliamentary rules are the best known

the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms,

to us for managing the debates, and obtaining the sense of a deliberative body. I have therefore made them my rule of decision, rejecting those of the old Congress altogether, and it gives entire satisfaction to the Senate; insomuch that we shall not only have a good system there, but probably, by the example of its effects, produce a conformity in the other branch. But in the course of this business I find perplexities, having for twenty years been out of deliberative bodies, and become rusty as to many points of proceeding; and so little has the Parliamentary branch of the law been attended to, that I not only find no person here, but not even a book to aid me. I had, at an early period of life, read a good deal on the subject, and common-placed what I read. This common-place has been my pillar; but there are many questions of practice on which that is silent, some of them are so minute indeed, and belong too much to every-day's practice, that they have never been thought worthy of being written down, yet from desuetude they have slipped my memory. You will see by the enclosed paper what they are. I know with what pain you write: therefore I have left a margin in which you can write a simple negative or affirmative opposite every position, or perhaps, with as little trouble, correct the text by striking out or interlining. This is what I have earnestly to solicit from you, and I would not have given you the trouble if I had had any other resource. But you are, in fact, the only spark of Parliamentary science now remaining to us. I am the more anxious, because I have been forming a manual of Parliamentary law which I mean to deposit with the Senate as the standard by which I judge, and am willing to be judged. Though I should be opposed to its being printed, yet it may be done perhaps without my consent; and in that case I should be sorry indeed should it go out with errors that a Tyro should not have committed. And yet it is precisely those to which I am most exposed. I am less afraid as to important matters, because for them I have printed authorities; but it is those small matters of daily practice, which twenty years ago were familiar to me, but have in that time escaped my memory. I hope under these circumstances you will pardon the trouble I propose to you in the enclosed paper. I am not pressed in time, so that your leisure will be sufficient for me. Accept the salutations of grateful and sincere friendship and attachment, and many prayers for your health and happiness from, Dear Sir, Yours affectionately.

as instituted by our ancestors, operated as a check, and control, on the actions of the majority; and that they were, in many instances, a shelter and protection to the minority, against the attempts of power."

So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are the forms and rules of proceeding, which have been adopted as they were found necessary from time to time, and are become the law of the house; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities.—2 *Hats.* 171, 172.

And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.—2 *Hats.* 149. And in 1698 the Lords say the reasonableness of what is desired is never considered by us, for we are bound to consider nothing but what

is usual. Matters of form are essential to government, and 'tis of consequence to be in the right. All the reason for forms is custom, and the law of forms is practice; the reason is quite out of doors. Some particular customs may not be grounded on reason, and no good account can be given of them; and yet many nations are zealous for them; and Englishmen are as zealous as any others to pursue their old forms and methods.—4 *Hats.* 258.

## SECTION II.

### LEGISLATURE.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.—*Constitution of the United States*, Article I., Section 1.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.—*Const. U. S.*, Art. I. Sec. 6.

For the powers of Congress, see the following Articles and Sections of the Constitution of the United States:—Art. I., Sec. 4, 7, 8, 9.—Art. II., Sec. 1, 2.—Art. III., Sec. 3.—Art. IV., Sec. 1, 3, 5.—And all the Amendments.

## SECTION III.

### PRIVILEGE.

The privileges of the members of Parliament, from small and obscure beginnings, have been advancing for centuries, with a firm and never-yielding pace. Claims seem to have been brought forward from time to time, and repeated till some example of their admission enabled them to build law on that

example. We can only, therefore, state the point of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere, for anything said in their own house: that during the time of privilege, 2d. Neither a member himself, his wife,[1] or his servants, [*familiares sui*] for any matter of their own, may be[2] arrested on mesne process, in any civil suit: 3d. Nor be detained under execution, though levied before the time of privilege: 4th. Nor impleaded, cited or subpœnaed, in any court: 5th. Nor summoned as a witness or juror: 6th. Nor may their lands or goods be distrained: 7th. Nor their persons assaulted, or characters traduced. And the period of time, covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the Crown, amounts in fact to a perpetual protection against the course of justice. In one instance, indeed, it has been relaxed by 10 *G.* 3, c. 50, which permits judiciary proceedings to go on against them. That these privileges must be continually progressive, seems to result from their rejecting all definition of them; the doctrine being, that "their dignity and independence are preserved by keeping their privileges indefinite;" and that "the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined and ascertained by any particular stated laws."—1 *Blackstone*, 163, 164.

[1] Order of the House of Commons, 1663, July 16.

[2] Elsynge, 217; 1 Hats. 21; 1 Grey's Deb. 133.

It was probably from this view of the encroaching character of privilege, that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially that those who make them shall not be exempt themselves from their operation, have only privileged "Senators and Representatives" themselves from the single act of arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective Houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either House. —*Const. U. S.*, Art. I. Sec. 6. Under the general authority "to make all laws necessary and proper for carrying into execution the powers given them," Const. U. S., Art. II., Sec. 8, they may provide by law the details which may be necessary for giving full effect to the enjoyment of this privilege. No such law being as yet made, it seems to stand at present on the following ground:—1. The act of arrest is void, *ab initio*, 2 Stra. 989.—2. The member arrested may be discharged on motion, 1 Bl. 166. 2. Stra. 990; or by Habeas Corpus under the Federal or State authority, as the case may be; or by a writ of privilege out of the Chancery, 2 Stra. 989, in those States which have adopted that part of the laws of England.—Orders of the House of Com. 1550, Feb. 20.—3. The arrest being unlawful, is a trespass for which the officer and others concerned are liable to action or indictment in the ordinary courts of justice, as in other cases of unauthorized arrest.—4. The court before which the process is returnable, is bound to act as in other cases of unauthorized proceeding, and liable also, as in other similar cases, to have their proceedings stayed or corrected by the Superior Courts.

The time necessary for going to and returning from Congress not being defined, it will of course be judged of in every particular case by those who will have to decide the case.

While privilege was understood in England to extend, as it does here, only to exemption from arrest *eundo*, *morando*, *et redeundo*, the House of Commons themselves decided that "a convenient time was to be understood."—1580—1 *Hats.* 99, 100. Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs, and to prepare for

his journey; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that which is most direct; some necessity perhaps constraining him to it.—2 *Stra.* 986, 987.

This privilege from arrest, privileges of course against all process, the disobedience is punishable by an attachment of the person; as a subpœna ad respondendum, or testificandum, or a summons on a jury; and with reason, because a member has superior duties to perform in another place.

When a Representative is withdrawn from his seat by summons, the 47,700 people whom he represents lose their voice in debate and vote, as they do in his voluntary absence: when a Senator is withdrawn by summons, his State loses half its voice in debate and vote, as it does in his voluntary absence. The enormous disparity of evil admits no comparison.

So far there will probably be no difference of opinion as to the privileges of the two Houses of Congress; but in the following cases it is otherwise. In Dec. 1795, the House of Representatives committed two persons of the names of Randall and Whitney, for attempting to corrupt the integrity of certain members, which they considered as a contempt and breach of the privileges of the House; and the facts being proved, Whitney was detained in confinement a fortnight, and Randall three weeks, and was reprimanded by the Speaker. In March, 1796, the House of Representatives voted a challenge given to a member of their House, to be a breach of the privileges of the House; the satisfactory apologies and acknowledgments being made, no further proceedings were had. The Editor of the Aurora having in his paper of Feb. 19, 1800, inserted some paragraphs defamatory to the Senate, and failed in his appearance, he was ordered to be committed. In debating the legality of this order, it was insisted in support of it, that every man, by the law of nature, and every body of men, possesses the right of self-defence; that all public functionaries are essentially invested with the powers of self-preservation; that they have an inherent right to do all acts necessary to keep themselves in a condition to discharge the trusts confided to them; that whenever authorities are given, the means of carrying

them into execution are given by necessary implication; that thus we see the British Parliament exercise the right of punishing contempts; all the State Legislatures exercise the same power; and every Court does the same; that if we have it not, we sit at the mercy of every intruder who may enter our doors or gallery, and by noise and tumult render proceeding in business impracticable; that if our tranquillity is to be perpetually disturbed by newspaper defamation, it will not be possible to exercise our functions with the requisite coolness and deliberation; and that we must therefore have a power to punish these disturbers of our peace and proceedings. To this it was answered, that the Parliament and Courts of England have cognizance of contempts by the express provisions of their law; that the State Legislatures have equal authority, because their powers are plenary; they represent their constituents completely, and possess all their powers, except such as their Constitutions have expressly denied them; that the Courts of the several States have the same powers by the laws of their States, and those of the Federal Government by the same State laws, adopted in each State by a law of Congress; that none of these bodies, therefore, derive those powers from natural or necessary right, but from express law; that Congress have no such natural or necessary power, nor any powers but such as are given them by the Constitution; that that has given them directly exemption from personal arrest, exemption from question elsewhere for what is said in the House, and power over their own members and proceedings; for these, no further law is necessary, the Constitution being the law; that, moreover, by that article of the Constitution which authorizes them "to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in them," they may provide by law for an undisturbed exercise of their functions, *e. g.* for the punishment of contempts, of affrays or tumults in their presence, &c.; but, till the law be made, it does not exist; and does not exist, from their own neglect; that in the meantime, however, they are not unprotected, the ordinary magistrates and courts of law being open and competent to punish all unjustifiable disturbances or defamations, and even their own sergeant, who may appoint deputies ad libitum to aid him, 3 *Grey*, 59, 147, 255, is equal to the smallest disturbances; that, in requiring a previous law, the Constitution had regard to the inviolability of the citizen as well as of the member; as, should one House, in the regular form of a bill, aim at too broad privileges, it may be checked by the other, and both by the President; and also as, the law being promulgated, the citizen will know how to avoid offence. But if one branch may assume its own privileges without control; if it may do it on the

spur of the occasion, conceal the law in its own breast, and after the fact committed make its sentence both the law and the judgment on that fact; if the offence is to be kept undefined, and to be declared only ex re nata, and according to the passions of the moment, and there be no limitation either in the manner or measure of the punishment the condition of the citizen will be perilous indeed. Which of these doctrines is to prevail, time will decide. Where there is no fixed law, the judgment on any particular case is the law of that single case only, and dies with it. When a new and even a similar case arises, the judgment which is to make, and at the same time apply, the law, is open to question and consideration, as are all new laws. Perhaps Congress, in the meantime, in their care for the safety of the citizens, as well as that for their own protection, may declare by law what is necessary and proper to enable them to carry into execution the powers vested in them, and thereby hang up a rule for the inspection of all, which may direct the conduct of the citizen, and at the same time test the judgments they shall themselves pronounce in their own case.

Privilege from arrest takes place by force of the election; and before a return be made, a member elected may be named of a committee, and is to every intent a member, except that he cannot vote until he is sworn.—*Memor.* 107, 108.—*D'Ewes*, 642. *col.* 2. 653. *col.* 1.—*Pet. Miscel. Parl.* 119; *Lex. Parl. c.* 23; 2 *Hats.* 22. 62.

Every man must, at his peril, take notice who are members of either House returned of record.—*Lex. Parl.* 23, 4—*Inst.* 24.

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the sergeant.—1 *Grey*, 88, 95.

The privilege of a member is the privilege of the House. If the member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the House.—*Grey*, 140. 222.

For any speech or debate in either House, they shall not be questioned in any other place.—*Const. U. S.*, Art. I. Sec. 6. *S. P. protest of Commons to James I.* 1621. 2 *Rapin.* No. 54. p. 211, 212. But this is restrained to things done in the House in a Parliamentary course, 1 *Rush*, 663.—For he is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. —*Com.* p.

If an offence be committed by a member in the House, of which the House has cognizance, it is an infringement of their right for any person or court to take notice of it, till the House has punished the offender, or referred him to a due course.—*Lex. Parl.* 63.

Privilege is in the power of the House, and is a restraint to the proceeding of inferior courts; but not of the House itself.—2 *Nalson*, 450; 2 *Grey*, 399. For whatever is spoken in the House, is subject to the censure of the House; and offences of this kind have been severely punished, by calling the person to the bar to make submission, committing him to the Tower, expelling the House, &c.—*Scob.* 72; *Lex. Parl. c.* 22.

It is a breach of order, for the Speaker to refuse to put a question which is in order.—*Hats.* 175, 176; 5 *Grey*, 133.

And even in cases of treason, felony, and breach of the peace, to which privilege does not extend as to substance; yet, in Parliament, a member is privi-

leged as to the mode of proceeding. The case is first to be laid before the House, that it may judge of the fact, and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege. Otherwise it would be in the power of other branches of the government, and even of every private man, under pretences of treason, &c., to take any man from his service in the House; and so as many, one after another, as would make the House what he pleaseth.—*Decision of the Commons on the King's declaring Sir John Hotham a traitor*—4 *Rushw.* 586. So when a member stood indicted of felony, it was adjudged that he ought to remain of the House till conviction. For it may be any man's case, who is guiltless, to be accused and indicted of felony, or the like crime.—23 *El.* 1580.—*D'Ewes*, 283, *col.* 1.—*Lex. Parl.* 133.

When it is found necessary for the public service to put a member under arrest, or when, on any public inquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the House, that they may know the reasons for such a proceeding, and take such steps as they think proper.—2 *Hats.* 259. Of which, see many examples.—2 *Hats.* 256, 257, 258. But the communication is subsequent to the arrest. —1 *Blackst.* 167.

It is highly expedient, says Hatsell, for the due preservation of the privileges of the separate branches of the Legislature, that neither should encroach on

the other, or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate, which is essential to a free council. They are, therefore, not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches that have been held, by the members of either of the other branches of the Legislature, until the same have been communicated to them in the usual Parliamentary manner.—2 *Hats.* 252; 4 *Inst.* 15; *Seld. Jud.* 63. Thus the King's taking notice of the bill for suppressing soldiers depending before the House, his proposing a provisional clause for a bill before it was presented to him by the two Houses, his expressing displeasure against some persons for matters moved in Parliament during the debate and preparation of a bill, were breaches of privilege.—2 *Nalson*, 743. And in 1783, December 17, it was declared a breach of fundamental privileges, &c., to report any opinion or pretended opinion of the King, on any bill or proceeding depending in either House of Parliament, with a view to influence the votes of the members.—2 *Hats.* 251, 6.

## SECTION IV.

### ELECTIONS.

The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators.—*Const. U. S.* Art. I. Sec. 4.

Each House shall be the judge of the elections, returns, and qualifications of its own members.—*Const. U. S.* Art. I. Sec. 5.

## SECTION V.

### QUALIFICATIONS.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the end of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.—*Const. U. S.*, Art. I. Sec. 3.

The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State

shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative.—*Const. U. S.* Art. I. Sec. 2.

The provisional apportionments of Representatives made in the Constitution in 1787, and afterwards by Congress, were as follows:—

| | 1787 | 1793 | 1801 | 1813 |
|---|---|---|---|---|
| New Hampshire, | 3 | 4 | 5 | 6 |
| Massachusetts, | 8 | 14 | 17 | 20 |
| Rhode Island, | 1 | 2 | 2 | 2 |
| Connecticut, | 5 | 7 | 7 | 7 |
| Vermont, | | 2 | 6 | 6 |
| New York, | 6 | 10 | 17 | 27 |
| New Jersey, | 4 | 5 | 6 | 6 |

| | 1787 | 1793 | 1801 | 1813 |
|---|---|---|---|---|
| Pennsylvania, | 8 | 13 | 18 | 23 |
| Delaware, | 1 | 1 | 1 | 2 |
| Maryland, | 6 | 8 | 9 | 9 |
| Virginia, | 10 | 19 | 22 | 23 |
| Kentucky, | .. | 2 | 3 | 10 |
| Tennessee, | .. | .. | 1 | 6 |
| North Carolina, | 5 | 10 | 12 | 13 |
| South Carolina, | 5 | 6 | 8 | 9 |
| Georgia, | 3 | 2 | 4 | 6 |
| Ohio, | .. | .. | .. | 6 |

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.—*Const. U. S.* Art. I. Sec. 2.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.—*Const. U. S.* Art. I. Sec. 6.

## SECTION VI.

### QUORUM.

A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.—*Const. U. S.* Art. I. Sec. 5.

In general, the chair is not to be taken till a quorum for business is present; unless, after due waiting, such a quorum be despaired of, when the chair may be taken, and the House adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted; and being found deficient, business is suspended.—2 *Hats.* 125, 126.

The President having taken the chair, and a quorum being present, the journal of the preceding day shall be read to the end, that any mistake may be corrected that shall have been made in the entries.—*Rules of the Senate*, 1.

## SECTION VII.

### CALL OF THE HOUSE.

On a call of the House, each person rises up as he is called, and answereth; the absentees are then only noted, but no excuse to be made till the House be fully called over. Then the absentees are called a second time, and if still absent, excuses are to be heard.—*Ord H. of C.* 92.

They rise that their persons may be recognized; the voice, in such a crowd, being an inefficient verification of their presence. But in so small a body as the Senate of the United States, the trouble of rising cannot be necessary.

Orders for calls on different days may subsist at the same time.—2 *Hats.* 72.

## SECTION VIII.

### ABSENCE.

No member shall absent himself from the service of the Senate without leave of the Senate first obtained. And in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the sergeant-at-arms, or any other person or persons by them authorized, for any or all absent members, as the majority of such members present shall agree, at the expense of such absent members respectively, unless such excuse for non-attendance shall be made, as the Senate, when a quorum is convened, shall judge sufficient, and in that case the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first convention of the Senate, at the

legal time of meeting, as to each day of the session, after the hour is arrived to which the Senate stood adjourned.—*Rule* 19.

## SECTION IX.

### SPEAKER.

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.—*Const. U. S.* Art. I. Sec. 3.

The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice-President, or when he shall exercise the office of President of the United States.—*Const. U. S.* Art. I. Sec. 3.

The House of Representatives shall choose their Speaker and other officers.—*Const. U. S.* Art. I. Sec. 3.

When but one person is proposed, and no objection made, it has not been usual in Parliament to put any question to the House; but without a question, the members proposing him, conduct him to the chair. But if there be objection, or another proposed, a question is put by the clerk.—2 *Hats.* 168. As are also questions of adjournment.—6 *Grey*, 406. Where the House debated and exchanged messages and answers with the King for a week, without a Speaker, till they were prorogued. They have done it de die in diem for 14 days.—1 *Chand.* 331, 335.

In the Senate, a President pro tempore, in the absence of the Vice-President, is proposed and chosen by ballot. His office is understood to be determined on the Vice-President's appearing and taking the chair, or at the meeting of the Senate after the first recess.—*Vide Rule* 23.

Where the Speaker has been ill, other Speakers pro tempore have been appointed. Instances of this

are, 1 *H.* 4, Sir John Cheney, and for Sir William Sturton, and in 15 *H.* 6, Sir John Tyrrell, in 1656, Jan. 27; 1658, Mar. 9; 1659, Jan. 13.

Sir Job Charlton ill, Seymour chosen, 1673, Feb. 18.

Seymour being ill, Sir Robert Sawyer chosen, 1678, April 15.

Sawyer being ill, Seymour chosen.

Not merely pro tempore. —1 *Chand.* 169, 276, 7.

Thorpe in execution, a new Speaker chosen—31 *H.* VI.—3 *Grey*, 11; and March 14, 1694, Sir John Trevor chosen. There have been no later instances. —2 *Hats.* 161.—4 *Inst.*—8 *Lex. Parl.* 263.

A Speaker may be removed at the will of the House, and a Speaker pro tempore appointed.—2 *Grey*, 186; 5 *Grey*, 134.

## SECTION X.

### ADDRESS.

The President shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.—*Const. U. S.* Art. II. Sec. 3.

A joint address from both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the whole House, or by the Speaker,—9 *Grey*, 473; 1 *Chandler*, 298, 301; or by such particular members as are of the Privy Council. —2 *Hats.* 278.

## SECTION XI.

### COMMITTEES.

Standing committees, as of privileges and elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House.—4 *Inst.* 11, 12; *Scob.* 7; 1 *Grey*, 112.

At these committees the members are to speak standing, and not sitting, though there is reason to conjecture it was formerly otherwise.—*D'Ewes*, 630, *col.* 1; 4 *Parl. Hist.* 440; 2 *Hats.* 77.

Their proceedings are not to be published, as they are of no force till confirmed by the House.—*Rushw. part* 3, *vol.* 2, 74; 3 *Grey*, 401; *Scob.* 39. Nor can they receive a petition but through the House.—9 *Grey*, 412.

When a committee is charged with an inquiry, if a member prove to be involved, they cannot proceed against him, but must make a special report to the House; whereupon the member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him.—9 *Grey*, 523.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise

instantly, and the members to attend the service of the House.—2 *Nals.* 19.

It appears, that on joint committee of the Lords and Commons, each committee acted integrally in the following instances:—7 *Grey*, 261, 278, 286, 338; 1 *Chandler*, 357, 462. In the following instances it does not appear whether they did or not:—6 *Grey*, 129; 7 *Grey*, 213, 229, 321.

## SECTION XII.

### COMMITTEE OF THE WHOLE.

The speech, messages, and other matters of great concernment, are usually referred to a committee of the whole House—6 *Grey*, 311, where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House, are then referred to one or more select committees, according as the subject divides itself into one or more bills.—*Scob.* 36, 44. Propositions for any charge on the people are especially to be first made in a committee of the whole.—3 *Hats.* 127. The sense of the whole is better taken in committee, because in all committees every one speaks as often as he pleases.—*Scob.* 49. They generally acquiesce in the chairman named by the Speaker; but, as well as all other committees, have a right to elect one, some member, by consent, putting the question.—*Scob.* 36; 3 *Grey*,

301. The form of going from the House into committee, is for the Speaker, on motion, to put the question that the House do now resolve itself into a committee of the whole, to take under consideration such a matter, naming it. If determined in the affirmative, he leaves the chair, and takes a seat elsewhere, as any other member; and the person appointed chairman seats himself at the clerk's table.—*Scob.* 36. Their quorum is the same as that of the House; and if a defect happens, the chairman, on a motion and question, rises, the Speaker resumes the chair, and the chairman can make no other report than to inform the House of the cause of their dissolution. If a message is announced during a committee, the Speaker takes the chair, and receives it, because the committee cannot.—2 *Hats*, 125, 126.

In a committee of the whole, the tellers, on a division, differing as to numbers, great heats and confusion arose, and dangers of a decision by the sword. The Speaker took the chair, the mace was forcibly laid on the table; whereupon, the members retiring to their places, the Speaker told the House "he had taken the chair without an order, to bring the House into order." Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every member was required, standing up in his place, to engage that he would proceed no further, in consequence of what had happened in the grand committee, which was done.—3 *Grey*, 139.

A committee of the whole being broken up in disorder, and the chair resumed by the Speaker without an order, the House was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the House; and it was decided in the House, without returning into committee.—3 *Grey*, 130.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise on a question, the House is resumed, and the chairman reports that the committee of the whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having time to go through the same, have directed him to ask leave to sit again. Whereupon, a question is put on their having leave, and on the time when the House will again resolve itself into a committee.—*Scob.* 38. But if they have gone through the matter referred to them, a member moves that the committee may rise, and the chairman report their proceedings to the House; which being resolved, the chairman rises, the Speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the House shall think proper to receive it. If the House have time to receive it, there is usually a cry of "Now, Now," whereupon he makes the report; but if it be late, the cry is, "To-morrow, To-morrow," or, "On Monday," etc.,

or a motion is made to that effect, and a question put, that it be received to-morrow, etc.—*Scob.* 38.

In other things the rules of proceedings are to be the same as in the House.—*Scob.* 39.

## SECTION XIII.

### EXAMINATION OF WITNESSES.

Common fame is a good ground for the House to proceed by inquiry, and even to accusation.—*Resolution of the House of Commons*, 1 *Car.* 1, 1625; *Rush. Lex. Parl.* 115; 1 *Grey*, 16. 22. 92; 8 *Grey*, 21. 23. 27. 45.

Witnesses are not to be produced but where the House has previously instituted an inquiry, 2 *Hats.* 102, nor then are orders for their attendance given blank.—3 *Grey*, 51. The process is a summons from the House.—4 *Hats.* 255. 258.

When any person is examined before a committee, or at the bar of the House, any member wishing to ask the person a question, must address it to the Speaker or chairman, who repeats the question to the person, or says to him, "You hear the question, answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved, or put, or debated, while they are there.—2 *Hats.* 108. Sometimes the questions are previously settled in writing before the witness enters.—2 *Hats.* 106, 107; 8 *Grey*, 64. The questions asked must be

entered in the journals.—3 *Grey*, 81. But the testimony given in answer before the House is never written down; but before a committee it must be for the information of the House, who are not present to hear it.—7 *Grey*, 52, 334.

If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody.—3 *Hats.* 52.

A member, in his place, gives information to the House of what he knows of any matter under hearing at the bar.—*Jour. H. of C.*, Jan. 22, 1744, 5.

Either House may request, but not command, the attendance of a member of the other. They are to make the request by message to the other House, and to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The House then gives leave to the member to attend, if he choose it; waiting first to know from the member himself whether he chooses to attend, till which they do not take the message into consideration. But when the Peers are sitting as a court of Criminal Judicature, they may order attendance; unless where it be a case of impeachment by the Commons. There it is to be a request.—3 *Hats.* 17; 9 *Grey*, 306. 406; 10 *Grey*, 133.

Counsel are to be heard only on private, not on public bills; and on such points of law only as the House shall direct.—19 *Grey*, 61.

## SECTION XIV.

### ARRANGEMENT OF BUSINESS.

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up, but is left to his own discretion, unless the House on a question decide to take up a particular subject. —*Hakew.* 136.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others having a priority of right to their attention in the general order of business.

In Senate, the bills and other papers which are in possession of the House, and in a state to be acted upon, are arranged every morning, and brought on in the following order:

1. Bills ready for a second reading are read, that they may be referred to committees, and so be put under way. But if, on their being read, no motion is made for commitment, they are then laid on the table in the general file, to be taken up in their just turn.

2. After twelve o'clock, bills ready for it are put on their passage.

3. Reports in possession of the House which offer grounds for a bill, are to be taken up, that the bill may be ordered in.

4. Bills or other matters before the House, and unfinished on the preceding day, whether taken up in turn, or on special order, are entitled to be resumed and passed on through their present stage.

5. These matters being despatched, for preparing and expediting business, the general file of bills and other papers is then taken up, and each article of it is brought on according to its seniority, reckoned by the date of its first introduction to the House. Reports on bills belong to the dates of their bills.

In this way we do not waste our time in debating what shall be taken up: we do one thing at a time, follow up a subject while it is fresh, and till it is done with; clear the House of business, gradation as it is brought on, and prevent, to a certain degree, its immense accumulation towards the close of the session.

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time, when no question is before the House. Such are original motions, and reports on bills. Such are, bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So, messages from the other House respecting amendments to bills, are taken up as soon as the House is clear of a question, unless they require to be printed for better consideration. Orders of the day may be called for, even when another question is before the House.

## SECTION XV.

### ORDER.

Each House may determine the rules of its proceedings; punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.—*Const.* I. 5.

In Parliament, "instances make order," *per Speaker Onslow*, 2 *Hats.* 144; but what is done only by one Parliament, cannot be called custom of Parliament: *by Prynne*, 1 *Grey*, 52.

## SECTION XVI.

### ORDER RESPECTING PAPERS.

The Clerk is to let no journals, records, accounts, or papers, be taken from the table, or out of his custody.—2 *Hats.* 193, 194.

Mr. Prynne having, at a committee of the whole,

amended a mistake in a bill, without order or knowledge of the committee, was reprimanded.—1 *Chand.* 77.

A bill being missing, the House resolved, that a protestation should be made and subscribed by the members, "before Almighty God and this honorable House, that neither myself nor any other, to my knowledge, have taken away, or do at this present conceal a bill entitled," &c.—5 *Grey*, 202.

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into.—*Town. col.* 209.

## SECTION XVII.

### ORDER IN DEBATE.

When the Speaker is seated in his chair, every member is to sit in his place.—*Scob.* 6; *Grey*, 403.

When any member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks.—*Scob.* 6; *D'Ewes*, 487, *col.* 1; 2 *Hats.* 77; 4 *Grey*, 66; 8 *Grey*, 108. But members who are indisposed may be indulged to speak sitting.—3 *Hats.* 75, 77; 1 *Grey*, 195.

In Senate, every member, when he speaks, shall address the chair, standing in his place; and when he has finished, shall sit down.—*Rule* 3.

When a member stands up to speak, no question is to be put; but he is to be heard, unless the House overrule him.—4 *Grey*, 390; 5 *Grey*, 6, 143.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name; whereupon he proceeds, unless he voluntarily sits down, and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision; in which case, the question is put, "which member was first up?"—2 *Hats.* 76; *Scob.* 7; *D'Ewes*, 434, *col.* 1, 2.

In the Senate of the United States, the President's decision is without appeal. Their rule is in these words:—*When two members rise at the same time, the President shall name the person to speak; but in all cases*, the member who shall first rise and address the chair, shall speak first.—*Rule* 5.

No man can speak more than once to the same bill, on the same day; or even on another day, if the debate be adjourned. But if it be read more than once, in the same day, he may speak once at every reading.—*Co.* 12, 116; *Hakew.* 148; *Scob.* 58; 2 *Hats.* 75. Even a change of opinion does not give a right to be heard a second time.—*Smyth. Comw. L.* 2. *c.* 3; *Arcan. Parl.* 17.

The corresponding rule of the Senate is in these words:—No member shall speak more than twice in any one debate on the same day, without leave of the Senate.—*Rule* 4.

But he may be permitted to speak again to clear a matter of fact.—3 *Grey*, 357, 416. Or merely to explain himself, 3 *Hats.* 73, in some material part of

his speech, *ib.* 75; or to the manner or words of the question, keeping himself to that only, and not travelling into the merits of it, *Memorials in Hakew.* 29; or to the orders of the House, if they be transgressed, keeping within that line, and falling into the matter itself.—*Mem. Hakew.* 30, 31.

But if the Speaker rises to speak, the member standing up ought to sit down, that he may be first heard. *Town. col.* 205; *Hale, Parl.* 133; *Mem. in Hakew.* 30, 31. Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge: then he may, with their leave, state the matter of fact.—3 *Grey*, 38.

No one is to speak impertinently or beside the question, superfluously or tediously.—*Scob.* 31, 33; 2 *Hats.* 166, 168; *Hale, Parl.* 133.

No person is to use indecent language against the proceedings of the House, no prior determination of which is to be reflected on by any member unless he means to conclude with a motion to rescind it.—2 *Hats.* 169, 170; *Rushw.* p. 3. v. 1. fol. 42. But while a proposition is under consideration, is still in fieri, though it has even been reported by a committee, reflections on it are no reflections on the House.—9 *Grey*, 308.

No person in speaking, is to mention a member then present by his name; but to describe him by his seat in the House, or who spoke last or on the

other side of the question, &c. *Mem. in Hakew.*—3 *Smyth's Comw. L. 2. c. 3*; nor to digress from the matter to fall upon the person.—*Scob.* 31; *Hale, Parl.* 133; 2 *Hats.* 166, by speaking, reviling, nipping, or unmannerly words against a particular member. *Smyth's Comw. L. 2. c. 3.* The consequence of a measure may be reprobated in strong terms; but to arraign the motives of those who propose or advocate it, is a personality, and against order. Qui digreditur a materia ad personam, Mr. Speaker ought to suppress.—*Ord. Com.* 1604, Apr. 19.

When a member shall be called to order he shall sit down, until the President shall have determined whether he is in order or not.—*Rule* 16.

No member shall speak to another, or otherwise interrupt the business of the Senate, or read any printed paper while the Journals or public papers are reading, or when any member is speaking in any debate.—*Rule* 2.

No one is to disturb another in his speech, by hissing, coughing, spitting.—6 *Grey*, 332; *Scob.* 8; *D'Ewes*, 332, *col.* 1; nor stand up to interrupt him,—*Town. col.* 205; *Mem. in Hakew.* 31; nor to pass between the Speaker and the speaking member; nor to go across the House,—*Scob.* 6; or to walk up and down it; or to take books or papers from the table, or write there.—2 *Hats.* 171.

Nevertheless, if a member finds it is not the inclination of the House to hear him, and that, by conversation or any other noise, they endeavor to drown his voice, it is the most prudent way to sub-

mit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattentive to a member who says anything worth their hearing.—2 *Hats.* 77, 78.

If repeated calls do not produce order, the Speaker may call by his name any member obstinately persisting in irregularity; whereupon the House may require the member to withdraw. He is then to be heard in exculpation and to withdraw. Then the Speaker states the offence committed, and the House considers the degree of punishment they will inflict. —2 *Hats.* 169, 7, 8, 172.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see 1 *Pet. Misc.* 82; 3 *Grey*, 128; 4 *Grey*, 328; 5 *Grey*, 38; 26 *Grey*, 204; 10 *Grey*, 8. Whenever warm words or an assault have passed between the members, the House, for the protection of their members, requires them to declare in their place not to prosecute any quarrel,—3 *Grey*, 128, 293; 5 *Grey*, 289; or orders them to attend the Speaker, who is to accommodate their differences, and to report to the House,—3 *Grey*, 419; and they are put under restraint, if they refuse, or until they do.—9 *Grey*, 234, 312.

Disorderly words are not to be noticed till the member has finished his speech.—5 *Grey*, 356; 6 *Grey*, 60. Then the person objecting to them, and desiring them to be taken down by the clerk at the table, must repeat them. The Speaker then may

direct the clerk to take them down in his minutes. But if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the clerk to take them down, as stated by the objecting member. They are then part of his minutes, and when read to the offending member, he may deny they were his words, and the House must then decide by a question, whether they are his words or not. Then the member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two members still insist to take the sense of the House, the member must withdraw before that question is stated, and then the sense of the House is to be taken.—2 *Hats.* 199; 4 *Grey*, 170; 6 *Grey*, 59. When any member has spoken, or other business intervened, after offensive words spoken, they cannot be taken notice of for censure. And this is for the common security of all, and to prevent mistakes, which must happen, if words are not taken down immediately. Formerly, they might be taken down at any time the same day.—2 *Hats.* 196; *Mem. in Hakew.* 71; 3 *Grey*, 48; 9 *Grey*, 514.

Disorderly words spoken in a committee, must be written down as in the House; but the committee can only report them to the House for animadversion.—6 *Grey*, 46.

The rule of the Senate says,—If a member be called to order for words spoken, the exceptionable words shall be immediately taken down in writing, that the President may be better enabled to judge.—*Rule* 17.

In Parliament, to speak irreverently or seditiously against the King, is against order.—*Smyth's Comw. L.* 2, *c.* 3; 2 *Hats.* 170.

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses.—8 *Grey*, 22.

Neither House can exercise any authority over a member or officer of the other, but should complain to the House of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed, which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder.—3 *Hats.* 51.

No member may be present when a bill, or any business concerning himself, is debating; nor is any member to speak to the merits of it till he with-

draws.—2 *Hats.* 219. The rule is, that if a charge against a member arise out of a report of a committee, or examination of witnesses in the House, as the member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against them. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order, or matter arising in debate, then the matter must be stated, that is, the question must be moved, himself heard and then to withdraw.—2 *Hats.* 121, 122.

Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary not only to the laws of decency, but to the fundamental principles of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to.—2 *Hats.* 119, 121; 6 *Grey*, 368.

No member is to come into the House with his head covered, nor to remove from one place to the other with his hat on, nor is to put on his hat in coming in, or removing, until he be sit down in his place.—*Scob.* 6.

A question of order may be adjourned to give time to look into precedents.—2 *Hats.* 118.

In the Senate of the United States, every question of order is to be decided by the President, without debate; but if there be a doubt in his mind, he may call for the sense of the Senate.—*Rule* 16.

In Parliament, all decisions of the Speaker may be controlled by the House.—3 *Grey*, 319.

## SECTION XVIII.

### ORDERS OF THE HOUSE.

Of right, the door of the House ought not to be shut, but to be kept by porters, or sergeants-at-arms, assigned for that purpose.—*Mod. ten. Parl.* 23.

By the rule of the Senate, on motion made and seconded to shut the doors of the Senate, on the discussion of any business which may in the opinion of a member, require secrecy, the President shall direct the gallery to be cleared; and during the discussion of such motion the door shall remain shut.—*Rule* 28.

No motion shall be deemed in order, to admit any person or persons whatever within the doors of the Senate-chamber, to present any petition, memorial, or address, or to hear any such read.—*Rule* 29.

The only case where a member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here, there having been already a resolution, any member has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it. Thus any member has a right to have the House or gallery cleared of strangers, an order existing for that purpose; or to have the House told when there is not a quorum present.—2 *Hats.* 87, 129. How far an order of the House is binding, see *Hakew.* 392.

But where an order is made that any particular matter be taken up on a particular day, there a question is to be put when it is called for, Whether the House will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the House is usually full—(*which in Senate is at noon*).

Orders of the day may be discharged at any time, and a new one made for a different day.—3 *Grey*, 48, 313.

When a session is drawing to a close, and the important bills are all brought in, the House, in order to prevent interruption by further unimportant bills, sometimes come to a resolution, that no new bill be brought in, except it be sent from the other House.—3 *Grey*, 156.

All orders of the House determine with the session; and one taken under such an order may, after the session is ended, be discharged on a Habeas Corpus.—*Raym.* 120; *Jacob's L. D. by Ruffhead*; *Parliament*, 1 *Lev.* 165, *Prichard's case*.

Where the Constitution authorizes each House to determine the rule of its proceedings, it must mean in those cases, legislative, executive, or judiciary, submitted to them by the Constitution, or in something relating to these, and necessary towards their execution. But orders and resolutions are sometimes entered in their journals, having no relation to these, such as acceptances of invitations to attend orations, to take part in processions, &c. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

## SECTION XIX.

### PETITIONS.

A petition prays something. A remonstrance has no prayer.—1 *Grey*, 58.

Petitions must be subscribed by the petitioners, *Scob.* 87; *L. Parl. c.* 22; 9 *Grey*, 362, unless they are attending, 1 *Grey*, 401, or unable to sign, and averred by a member.—3 *Grey*, 418. But a petition not subscribed, but which the member presenting it affirmed to be all in the handwriting of the petitioner, and his name written in the beginning, was, on the question, (March 14, 1800,) received by the Senate. The averment of a member, or somebody without doors, that they know the handwriting of the petitioners, is necessary, if it be questioned.—6 *Grey*, 36. It must be presented by a member, not by the petitioners, and must be opened by him, holding it in his hand.—10 *Grey*, 57.

Before any petition or memorial, addressed to the Senate, shall be received and read at the table, whether the same shall be introduced by the President or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer.—*Rule* 21.

Regularly a motion for receiving it must be made and seconded, and a question put, Whether it shall be received? But a cry from the House of "Received," or even its silence, dispenses with the formality of this question: it is then to be read at the table, and disposed of.

## SECTION XX.

### MOTIONS.

When a motion has been made, it is not to be put to the question, or debated, until it is seconded.—*Scob.* 21.

The Senate say, No motion shall be debated until the same shall be seconded.—*Rule* 6.

It is then, and not till then, in possession of the House. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker, as often as any member desires it for his information.—2 *Hats.* 82.

The rule of the Senate is, When a motion shall be made and seconded, it shall be reduced to writing, if desired by the President or any member, delivered in at the table, and read by the President before the same shall be debated.—*Rule* 7.

It might be asked, whether a motion for adjournment, or for the orders of the day, can be made by one member while another is speaking? It cannot. When two members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order if he departs from it. And the question of order being decided, he is still to be heard through. A call for adjournment, or for the order of the day, or for the question, by gentlemen from their seats, is not a motion. No motion can be made without arising and addressing the chair. Such calls are themselves

breaches of order, which, though the member who has risen may respect as an expression of impatience of the House against farther debate, yet, if he chooses, he has a right to go on.

## SECTION XXI.

### RESOLUTIONS.

When the House commands, it is by an "order." But facts, principles, their own opinions and purposes, are expressed in the form of resolutions.

A resolution for an allowance of money to the clerks being moved, it was objected to as not in order, and so ruled by the chair. But on appeal to the Senate, (i. e., a call for their sense by the President, on account of doubt in his mind, according to Rule 16), the decision was overruled.—*Journ. Sen.*, June 1, 1796. I presume the doubt was, whether an allowance of money could be made otherwise than by bill.

## SECTION XXII.

### BILLS.

Every bill shall receive three readings previous to its being passed; and the President shall give notice at each, whether it be the first, second, or third; which readings shall be on three different days, unless the Senate unanimously direct otherwise, or unless by a joint vote of both Houses, or the expiration of their term, the session is to be closed within three days.—*Rule* 13.

## SECTION XXIII.

### BILLS, LEAVE TO BRING IN.

One day's notice, at least, shall be given of an intended motion for leave to bring in a bill.—*Rule* 12.

When a member desires to bring a bill on any subject, he states to the House, in general terms, the causes for doing it, and concludes by moving for leave to bring in a bill, entitled, etc. Leave being given, on the question, a committee is appointed to prepare and bring in the bill. The mover and seconder are always appointed on this committee, and one or more in addition.—*Hakew.* 132; *Scob.* 40.

It is to be presented fairly written, without any erasure or interlineation; or the Speaker may refuse it.—*Scob.* 31; 1 *Grey*, 82, 84.

## SECTION XXIV.

### BILLS, FIRST READING.

When a bill is first presented, the clerk reads it at the table, and hands it to the Speaker, who, rising, states to the House the title of the bill; that this is the first time of reading it; and the question will be, Whether it shall be read a second time? Then, sitting down, to give an opening for objections; if none be made, he rises again, and puts the question, Whether it shall be read a second time?—*Hakew.* 137, 141. A bill cannot be amended at the first reading,—6 *Grey*, 286; nor is it usual for it to be opposed then, but it may be done and rejected.—*D'Ewes*, 335, *col.* 1; 3 *Hats.* 198.

## SECTION XXV.

### BILLS, SECOND READING.

The second reading must regularly be on another day.—*Hakew.* 143. It is done by the clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the House the title of the bill, that this is the second time of reading it, and that the question will be, Whether it shall be committed, or engrossed and read a third time? But if the bill came from the other House, as it always comes engrossed, he states that the question will be, Whether it shall be read a third time? And before he has so reported the state of the bill, no one is to speak to it.—*Hakew.* 143, 146.

In the Senate of the United States, the President reports the title of the bill, that this is the second time of reading it, that it is now to be considered as in a committee of the whole, and the question will be, Whether it shall be read a third time? or, that it may be referred to a special committee.

## SECTION XXVI.

### BILLS, COMMITMENT.

If, on motion and question, it be decided that the bill shall be committed, it may then be moved to be referred to a committee of the whole House, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and the clerk is to write him down as of the committee. But the House

have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

Those who take exceptions to some particulars in the bill, are to be of the committee. But none who speak directly against the body of the bill. For he that would totally destroy, would not amend it.—*Hakew.* 146; *Town. col.* 208; *D'Ewes*, 634, *col.* 2; *Scob.* 47; or, as is said, 5 *Grey*, 145, the child is not to be put to a nurse that cares not for it.—6 *Grey*, 373. It is therefore a constant rule, "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill, hears himself named of its committee, he ought to ask to be excused. Thus, March 6, 1606, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself.—*Scob.* 48.

No bill shall be committed or amended until it shall have been twice read, after which it may be referred to a committee.—*Rule* 14.

All committees shall be appointed by ballot, and a plurality of voices shall make a choice.—*Rule* 15.

The clerk may deliver the bill to any member of the committee.—*Town. col.* 138. But it is usual to deliver it to him who is first named.

In some cases, the House has ordered the committee to withdraw immediately into the committee-chamber, and act on and bring back the bill, sitting the House.—*Scob.* 48.

A committee meets when and where they please, if the House has not ordered time and place for them.—6 *Grey*, 370. But they can only act when together, and not by separate consultation and consent; nothing being the report of the committee, but what has been agreed to in committee, actually assembled.

A majority of the committee constitutes a quorum for business.—*Elsynge's method of passing bills*, 11.

Any member of the House may be present at any select committee, but cannot vote, and must give place to all of the committee, and must sit below them.—*Elsynge*, 12; *Scob.* 49.

But in 1626, April 24th, the House of Commons resolved that though any members may be present at the examination of witnesses, they may not be at the debate, disposition, or penning of the business by the select committee.—4 *Hats.* 124.

The committee have full power over the bill, or other paper committed to them, except that they cannot change the title or subject.—8 *Grey*, 228.

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them, or be referred to them. In every case, the whole paper is read first by the clerk, and then by the chairman, by paragraphs, *Scob.* 49, pausing at the end of each paragraph, and putting questions, for amending, if proposed. In the case of resolutions on distinct subjects, originating with themselves, a

question is put on each separately, as amended, or unamended, and no final question on the whole.—3 *Hats.* 276. But if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by inserting or striking out, if proposed; but no question on agreeing to the paragraphs separately. This is reserved to the close, when a question is put on the whole for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper having been adopted by the House, stand, of course, unless altered, or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House without amendments, and there make their opposition.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that, when a latter part has been amended, you cannot recur back and make any alteration in a former part.—2 *Hats.* 90. In numerous assemblies, this restraint is, doubtless, important.

But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.

To this natural order of beginning at the beginning, there is a single exception found in Parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble, till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill, such alterations may therein be made, as may also occasion the alteration of the preamble.—*Scob.* 50; 7 *Grey*, 431.

On this head, the following case occurred in the Senate, March 6, 1800. A resolution which had no preamble, having been already amended by the House, so that a few words only of the original remained in it, a motion was made to prefix a preamble, which, having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with. But the preamble was received; because we are in fact through the body of the resolution, we have amended that as far as amendments have been offered, and indeed till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution, is for

the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backwards and forwards for the purpose of amendments, not permitting amendments in a subsequent, to preclude those in a prior part, or *a converso*.

When the committee is through the whole, a member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be.—2 *Hats.* 289, 292; *Scob.* 53; 2 *Hats.* 290; 8 *Scob.* 50.

When a vote is once passed in a committee, it cannot be altered but by the House, their votes being binding on themselves.—1607, June 4.

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself, set down the amendments, stating the words that are to be inserted or omitted, *Scob.* 50; and where, by reference to the page, line, and word of the bill.—*Scob.* 50.

## SECTION XXVII.

### REPORT OF COMMITTEE.

The chairman of the committee, standing in his place, informs the House that the committee, to

whom was referred such a bill, have, according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments, (as the case may be,) which he is ready to do when the House pleases to receive it. And he, or any other, may move that it be now received. But the cry of "now, now," from the House, generally dispenses with the formality of a motion and question. He then reads the amendments, with the coherence in the bill, and opens the alterations, and the reasons of the committee for such amendment, until he has gone through the whole. He then delivers it at the clerk's table, where the amendments reported are read by the clerk, without the coherence; whereupon the papers lie upon the table, till the House, at his convenience, shall take up the report.—*Scob.* 52; *Hakew.* 148.

The report being made, the committee is dissolved, and can act no more without a new power.—*Scob.* 51. But it may be revived by a vote, and the same matter recommitted to them.—4 *Grey*, 361.

## SECTION XXVIII.

### BILL, RECOMMITMENT.

After a bill has been committed and reported, it ought not, in an ordinary course, to be recommitted. But in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the

same committee.—*Hakew.* 151. If a report be committed before agreed to in the House, what has passed in the committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed.—3 *Hats.* 131, note.

In Senate, January, 1800, the salvage bill was recommitted three times after the commitment.

A particular clause of a bill may be committed without the whole bill,—3 *Hats.* 131; or so much of a paper to one, and so much to another committee.

## SECTION XXIX.

### BILL, REPORT TAKEN UP.

When the report of a paper, originating with a committee, is taken up by the House, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to *seriatim*,—5 *Grey*, 365; 6 *Grey*, 368; 8 *Grey*, 47, 104, 360; 1 *Torbuck's deb.* 124; 3 *Hats.* 348,—no question need be put on the whole report. —5 *Grey*, 381.

On taking up a bill reported with amendments, the amendments only are read by the clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment.—*Elsynge's Mem.* 23. When through the amendments

of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill; as he does also if it has been reported without amendments; putting no question but on amendments proposed; and when through the whole, he puts the question, Whether the bill shall be read the third time?

## SECTION XXX.

### QUASI-COMMITTEE.

If, on the motion and question, the bill be not committed, or if no proposition for commitment be made, then the proceedings in the Senate of United States and in Parliament are totally different. The former shall be first stated.

The 20th rule of the Senate says, "All bills, on a second reading, shall first be considered by the Senate in the same manner as if the Senate were in a committee of the whole, before they shall be taken up and proceeded on by the Senate agreeably to the standing rules, unless otherwise ordered;" that is to say, unless ordered to be referred to a special committee.

The proceeding of the Senate, as in committee of the whole, or in quasi-committee, are precisely as in a real committee of the whole, taking no questions but on amendments. When through the whole, they consider the quasi-committee as risen, the House resumed, without any motion, question, or resolution to that effect, and the President reports, that "the House, acting as in committee of the whole, have had under consideration the bill entitled, &c., and have made sundry amendments, which he will now report to the House." The bill is then before them, as it would have been if reported from a committee, and questions are regularly to be put again on every amendment: which being gone through, the President pauses to give time to the House to propose amendments to the body of the bill, and when through, puts the question, whether it shall be read a third time?

After progress in amending a bill in quasi-committee, a motion may be made to refer it to a special committee. If the motion prevails, it is equivalent in effect to the several votes that the committee rise, the House resume itself, discharge the committee of the whole, and refer the bill to a special committee. In that case, the amendments already made fall. But if the motion fails, the quasi-committee stands in *statu quo*.

How far does this 20th rule subject the House, when in quasi-committee, to the laws which regulate the proceedings of a committee of the whole? The particulars, in which these differ from proceedings in the House, are the following:—1. In a committee, every member may speak as often as he pleases.—2. The votes of a committee may be rejected or altered when reported to the House.—3. A committee, even of the whole, cannot refer any matter to another committee.—4. In a committee, no previous question can be taken: the only means to avoid an improper discussion, is to move that the committee rise; and if it be apprehended that the same discussion will be attempted on returning into committee, the House can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question.—5. A committee cannot punish a breach of order, in the House, or in the gallery,—9 *Grey*, 113; it can only rise and report it to the House, who may proceed to punish.

The 1st and 2d of these peculiarities attach to the quasi-committee of the Senate, as every day's practice proves; and seem to be the only ones to which the 20th rule meant to subject them: for it continues to be a House, and therefore, though it acts in some respects as a com-

mittee, in others it preserves its character as a House.—Thus, 3d, It is in the daily habit of referring its business to a special committee.—4th. It admits the previous question: if it did not, it would have no means of preventing an improper discussion; not being able, as the committee is, to avoid it by returning into the House: for the moment it would resume the same subject there, the 20th rule declares it again a quasi-committee.—5th. It would doubtless exercise its powers as a House on any breach of order.—6th. It takes a question by Yea and Nay, as the House does.—7th. It receives messages from the President and the other House.—8th. In the midst of a debate, it receives a motion to adjourn, and adjourns as a House, not as a committee.

## SECTION XXXI.

### BILL, SECOND READING IN THE HOUSE.

In Parliament, after the bill has been read a second time, if, on the motion and question, it be not committed, or if no proposition for commitment be made, the Speaker reads it by paragraphs, pausing between each, but putting no questions but on amendments proposed; and when through the whole, he puts the question, Whether it shall be read the third time? if it came from the other House. Or, if originating with themselves, Whether it shall be engrossed and read a third time? The Speaker reads sitting, but rises to put a question. The clerk stands while he reads.

But the Senate of the United States is so much in the habit of making many and material amendments at the third reading, that it has become the practice not to engross a bill till it has passed. An irregular and dangerous practice; because, in this way, the paper which passes the Senate is not that which goes to the other House; and that which goes to the other House as the act of the Senate, has never been seen in Senate. In reducing numerous, difficult, and illegible amend-

ments into the text, the secretary may, with the most innocent intentions, commit errors which can never again be corrected.

The bill being now as perfect as its friends can make it, this is the proper stage for those, fundamentally opposed, to make their first attack. All attempts at other periods are with disjointed efforts; because many who do not expect to be in favor of the bill, ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves, and to hear what can be said for it; knowing that, after all, they have sufficient opportunities of giving it their veto. Its two last stages, therefore, are reserved for this, that is to say, on the question, Whether it shall be engrossed and read a third time? and, lastly, Whether it shall pass? The first of these is usually the most interesting contest; because then the whole subject is new and engaging, and the minds of the members having not yet been declared by any trying vote, the issue is the more doubtful. In this stage, therefore, is the main trial of strength between its friends and opponents; and it behooves every one to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question, Whether it shall pass?

When the bill is engrossed, the title is to be endorsed on the back, and not within the bill.—*Hakew* 250.

## SECTION XXXII.

### READING PAPERS.

Where papers are laid before the House, or referred to a committee, every member has a right to have them once read at the table, before he can be compelled to vote on them. But it is a great, though common error, to suppose that he has a right, *toties quoties*, to have acts, journals, accounts, or papers, on the table, read independently of the will of the House. The delay and interruption which this might be made to produce, evince the impossibility of the existence of such a right. There is indeed so manifest a propriety of permitting every member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information, and not for delay, the Speaker directs it to be read without putting a question, if no one objects. But if objected to, a question must be put.—2 *Hats.* 117, 118.

It is equally an error to suppose, that any member has a right, without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the House.—2 *Hats.* 117, 118.

For the same reason, a member has not a right to read a paper in his place, if it be objected to, without leave of the House. But this rigor is never exercised but where there is an intentional or gross abuse of the time and patience of the House.

A member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time; and therefore is not refused, but where that is intended.—2 *Grey*, 227.

A report of a committee of the Senate on a bill from the House of Representatives being under consideration, on motion that the report of the committee of the House of Representatives on the same bill be read in the Senate, it passed in the negative.—Feb. 28, 1793.

Formerly, when papers were referred to a committee, they used to be first read; but of late, only the titles; unless a member insists they shall be read, and then nobody can oppose it.—2 *Hats.* 117.

## SECTION XXXIII.

### PRIVILEGED QUESTIONS.

While a question is before the Senate, no motion shall be received unless for an amendment, for the previous question, or for postponing the main question, or to commit it, or to adjourn.—*Rule* 8.

It is no possession of a bill, unless it be delivered to the clerk to be read, or the Speaker reads the title.—*Lex. Parl.* 274; *Elsynge, Mem.* 85; *Ord. House Commons*, 64.

It is a general rule, that the question first moved and seconded shall be first put.—*Scob.* 28, 22; 2 *Hats.* 81. But this rule gives way to what may be called privileged questions; and the privileged questions are of different grades among themselves.

A motion to adjourn, simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion cannot be received after another question is actually put, and while the House is engaged in voting.

Orders of the day take place of all other questions, except for adjournment. That is to say, the question which is the subject of an order, is made a privileged one, *pro hac vice*. The order is a repeal of the general rule as to this special case. When any member moves, therefore, for the orders of the day to be read, no further debate is permitted on the question which was before the House; for if the debate might proceed, it might continue through the day, and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, "Whether the House will now proceed to the orders of the day?" they must be read and proceeded on in the course in which they stand.—2 *Hats.* 83. For priority of order gives priority of right, which cannot be taken away but by another special order.

After these there are other privileged questions, which will require considerable explanation.

It is proper that every Parliamentary assembly should have certain forms of questions, so adapted as to enable them fitly to dispose of every proposition which can be made to them. Such are, 1. The previous question: 2. To postpone indefinitely:

3. To adjourn to a definite day: 4. To lie on the table: 5. To commit: 6. To amend. The proper occasion for each of these questions should be understood.

1. When a proposition is moved, which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing, for that time, the motion and its discussion.—3 *Hats.* 188, 189.

2. But as the previous question gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely.—3 *Hats.* 183. This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit sine die is a discontinuance of it.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such a day within the session as will answer the views of the House.—2 *Hats.* 81. And those who have spoken before, may not speak again when the adjourned debate is resumed.—2 *Hats.* 73. Sometimes, however, this has been abusively used, by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

4. When the House has something else which claims its present attention, but would be willing

to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on their table. It may then be called for at any time.

5. If the proposition will want more amendment and digestion than the formalities of the House will conveniently admit, they refer it to a committee.

6. But if the proposition be well digested, and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

The Senate, in their practice, vary from this regular gradation of forms. Their practice, comparatively with that of Parliament, stands thus:

| For the Parliamentary, | The Senate uses, |
|---|---|
| Postmt. indefinite. | —Postmt. to a day beyond the session. |
| Adjournment, | —Postmt. to a day within the session. |
| Laying on the table. | Postponement indefinite.<br>Laying on the table. |

In their 8th Rule, therefore, which declares, that while a question is before the Senate, no motion shall be received, unless it be for the previous question, or to postpone, commit or amend the main question, the term postponement must be understood according to their broad use of it, and not in its Parliamentary sense. Their rule then establishes as privileged questions, the previous question, postponement, commitment, and amendment.

But it may be asked, Have these questions any privilege among themselves? or are they so equal that the common principle of the "first moved, first

put," takes place among them? This will need explanation. Their competitions may be as follows:

| | | |
|---|---|---|
| 1. Prev. Qu. and | Postpone<br>Commit<br>Amend | In the 1st, 2d, and 3d classes, and the 1st member of the 4th class, the rule "first moved, first put," takes place. |
| 2. Postpone and | Prev. Qu.<br>Commit<br>Amend | |
| 3. Commit and | Prev. Qu.<br>Postpone<br>Amend | |
| 4. Amend and | Prev. Qu.<br>Postpone<br>Commit | |

In the 1st class, where the previous question is first moved, the effect is peculiar; for it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it. For if the previous question be decided affirmatively, to wit, that the main question shall *now* be put, it would of course be against the decision to postpone or commit. And if it be decided negatively, to wit, that the main question shall not now be put, this puts the House out of possession of the main question, and consequently there is nothing before them to postpone or commit. So that neither voting for nor against the previous question will enable the advocates for postponing or committing to get at their object. Whether it may be amended, shall be examined hereafter.

2d class.—If postponement be decided affirmatively, the proposition is removed from before the House, and consequently there is no ground for the

previous question, commitment, or amendment. But if decided negatively, that it shall not be postponed, the main question may then be suppressed by the previous question, or may be committed or amended.

The 3d class is subject to the same observations as the 2d.

The 4th class.—Amendment of the main question first moved, and afterwards the previous question, the question of amendment shall be first put.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the main question would be in Parliament. The reason is, that the question for amendment is not suppressed by postponing or adjourning the main question, but remains before the House whenever the main question is resumed; and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the House had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing, though last moved, shall be first put; because in truth it facilitates and befriends the motion to amend. *Scobell* is express:—"On a motion to amend a bill, any one may, notwithstanding, move to commit it, and the question for commitment shall be first put."—*Scob.* 46.

We have hitherto considered the case of two or more of the privileged questions contending for privi-

lege between themselves, when both were moved on the original or main question; but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one, *e. g.*

Suppose a motion to postpone, commit, or amend the main question, and that it be moved to suppress that motion by putting the previous question on it. This is not allowed, because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way, by deciding against the postponement, commitment, or amendment.—2 *Hats.* 81, 2, 3, 4.

Suppose a motion for the previous question, or commitment or amendment of the main question, and that it be then moved to postpone the motion for the previous question, or for commitment or amendment of the main question: 1. It would be absurd to postpone the previous question, commitment, or amendment, alone, and thus separate the appendage from its principal; yet it must be postponed separately from the original, if at all, because the 8th rule of the Senate says, that when a main question is before the House, no motion shall be received but to commit, amend, or pre-question the original question, which is the parliamentary doctrine; therefore, the motion to postpone the secondary motion for the previous question, or for committing or amending, cannot be received: 2. This is a piling of questions one on another, which, to

avoid embarrassment, is not allowed: 3. The same result may be had more simply, by voting against the previous question, commitment, or amendment.

Suppose a commitment moved, of a motion for the previous question, or to postpone, or amend.

The 1st, 2d, and 3d reasons before stated, all hold good against this.

Suppose an amendment moved to a motion for the previous question? Answer: The previous question cannot be amended. Parliamentary usage, as well as the 9th rule of the Senate, has fixed its form to be, "Shall the main question be now put?" *i. e.*, at this instant. And as the present instant is but one, it can admit of no modification. To change it to to-morrow, or any other moment, is without example and without utility. But suppose a motion to amend a motion for postponement, as to one day instead of another, or to a special instead of indefinite time. The useful character of amendment gives it a privilege of attaching itself to a secondary privileged motion. That is, we may amend a postponement of a main question. So we may amend a commitment of a main question, as by adding, for example, "with instruction to inquire," &c. In like manner, if an amendment be moved to an amendment, it is admitted. But it would not be admitted in another degree, to wit, to amend an amendment to an amendment of a main question. This would lead to too much embarrassment. The line must be drawn somewhere; and usage has drawn it after the

amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

*In filling a blank with a sum, the largest sum shall be first put to the question, by the 18th .Rule of the Senate*, contrary to the rule of Parliament, which privileges the smallest sum and longest time.—5 *Grey*, 179; 2 *Hats.* 8, 83; 3 *Hats.* 132, 133. And this is considered to be not in the form of an amendment to the question, but as alternative or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the *terminus in quem* in any other case. Then the question must begin *a maximo*. Or whether the lesser includes the greater, as in question on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence, or the *terminus a quo* in any other case, where the question must begin *a minimo*. The object being not to begin at that extreme, which, and more, being within every man's wish, no one could negative it, and yet if we should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance

or recede till you get to a number which will unite a bare majority.—3 *Grey*, 376, 384, 385. "The fair question in this case is not that to which and more all will agree, whether there shall be addition to the question."—1 *Grey*, 365.

Another exception to the rule of priority is, when a motion has been made to strike out or agree to a paragraph. Motions to amend it are to be put to the question, before a vote is taken on striking out, or agreeing to the whole paragraph.

But there are several questions, which, being incidental to every one, will take place of every one, privileged or not; to wit, a question of order arising out of any other question, must be decided before that question.—2 *Hats.* 88.

A matter of privilege arising out of any question, or from a quarrel between two members, or any other cause, supersedes the consideration of the original question, and must first be disposed of.—2 *Hats.* 88.

Reading papers relative to the question before the House. This question must be put before the principal one.—2 *Hats.* 88.

Leave asked to withdraw a motion. The rule of Parliament being, that a motion made and seconded is in possession of the House, and cannot be withdrawn without leave, the very terms of the rule imply that leave may be given, and, consequently, may be asked and put to the question.

## SECTION XXXIV.

### THE PREVIOUS QUESTION.

When any question is before the House, any member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man may speak anything further to it, either to add or alter.—*Memor. in Hakew.* 28; 4 *Grey*, 27.

The previous question being moved and seconded, the question from the chair shall be, "Shall the main question be now put?" and if the nays prevail, the main question shall not then be put.—*Rule* 9.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604.—2 *Hats.* 80. Sir Henry Vane introduced it.—2 *Grey*, 113, 114; 3 *Grey*, 384. When the question was put in this form, "Shall the main question be put?" a determination in the negative suppressed the main question during the session; but since the words "now put" are used, they exclude it for the present only. Formerly, indeed, only till the present debate was over; 4 *Grey*, 43; but now for that day and no longer.—2 *Grey*, 113, 114.

Before the question, "Whether the main question shall now be put?" any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all.—*Mem. in Hakew.* 28.

The proper occasion for the previous question is, when a subject is brought forward of a delicate nature as to high personages, etc., or the discussion of which may call forth observations which might be of injurious consequences. Then the previous question is proposed, and, in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question. The use of it has been extended abusively to other cases; but in these, it is an embarrassing procedure: its uses would be as well answered by other more simple Parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible.

Whether a main question may be amended after the previous question on it has been moved and seconded? 2 *Hatsell*, 88, says, If the previous question had been moved and seconded, and also proposed from the chair, (by which he means, stated by the Speaker for debate,) it has been doubted whether an amendment can be admitted to the main question. He thinks it may, after the previous question moved and seconded; but not after it has been proposed from the chair.

In this case he thinks the friends to the amendment must vote that the main question be not now put, and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and therefore may be proposed as a new one. But this proceeding certainly endangers the main question, by dividing

its friends, some of whom may choose it unamended, rather than lose it altogether; while others of them may vote, as Hatsell advises, that the main question be not now put, with a view to move it again in an amended form. The enemies of the main question by this manœuvre to the previous question, get the enemies to the amendment added to them on the first vote, and throw the friends of the main question under the embarrassment of rallying again as they can. To support his opinion, too, he makes the deciding circumstance, whether an amendment may or may not be made, to be, that the previous question has been proposed from the chair. But as the rule is, that the House is in possession of a question as soon as it is moved and seconded, it cannot be more than possessed of it by its being also proposed from the chair. It may be said, indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend, and, in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges, too, that the practice has been to admit previous amendment, and only cites a few late instances to the contrary. On the whole, I should think it best to decide it *ab inconvenienti;* to wit, Which is most inconvenient, to put

it in the power of one side of the House to defeat a proposition by hastily moving the previous question and thus forcing the main question to be put amended? or to put it in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience; inasmuch as the Speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question; and inasmuch also, as so great a proportion of the cases, in which the previous question is called for, are fair and proper subjects of public discussion, and ought not to be obstructed by a formality introduced for questions of a peculiar character.

## SECTION XXXV.

### AMENDMENTS.

On an amendment being moved, a member who has spoken to the main question may speak again to the amendment.—*Scob.* 23.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House; but not within the competence of the Speaker to suppress, as if it were against order. For, were he permitted to draw questions of consistence within the vortex of order, he might usurp a negative on important modifications, and suppress instead of subserving the legislative will.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition, by making it bear a sense different from what was intended by the movers, so that they vote against it themselves.—2 *Hats.* 79; 4, 82, 84. A new bill may be ingrafted, by way of amendment, on the words, "Be it enacted," &c.—1 *Grey*, 190, 192.

If it be proposed to amend by leaving out certain words, it may be moved as an amendment to this amendment, to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill.—2 *Hats.* 80, 9. The Parliamentary question is always, Whether the words shall stand part of the bill?

When it is proposed to amend by inserting a paragraph, or part of one, the friends of the paragraph may make it as perfect as they can, by amendments, before the question is put for inserting it. If it be received, it cannot be amended afterwards, in the same stage, because the House has, on a vote, agreed to it in that form. In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If, on the question, it be retained, it cannot be amended afterwards; because a vote against striking out is equivalent to a vote agreeing to it in that form.

When it is moved to amend, by striking out certain

words and inserting others, the manner of stating the question is, first to read the whole passage to be amended, as it stands at present; then the words proposed to be struck out; next those to be inserted; and lastly, the whole passage, as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others.—2 *Hats.* 80, 7.

A motion is made to amend by striking out certain words, and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissible; because to strike out and insert A, is one proposition. To strike out and insert B, is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived. For as putting the whole motion to the question at once would not have precluded, the putting the half of it cannot do it.[1]

[1] In a case of division of the question, and a decision against striking out, I advance, doubtingly, the opinion here expressed. I find no authority either way; and I know it may be viewed under a different

But if it had been carried affirmatively to strike out the words and to insert A, it could not afterwards be permitted to strike out A and insert B. The mover of B should have notified, while the insertion of A was under debate, that he would move to insert B. In which case, those who preferred it would join in rejecting A.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A, provided the coherence to be struck out be so substantial as to make this effectively a different proposition. For then it is resolved into the common case of striking out a paragraph after amending it. Nor does anything forbid a new insertion, instead of A and its coherence.

In Senate, January 25, 1798, a motion to postpone, until the second Tuesday in February, some amendments proposed to the Constitution. The words, "until the second Tuesday in February," were struck out by way of amendment. Then it was moved to add, "until the first day of June." Objected, that it was not in order, as the question should first be put on the longest time; therefore, a shorter time decided against, a longer cannot be put to question. It was answered, that this rule takes place only in filling

aspect. It may be thought, that having decided separately not to strike out the passage, the same question for striking out cannot be put over again, though with a view to a different insertion. Still I think it more reasonable and convenient to consider the striking out and insertion as forming one proposition; but should readily yield to any evidence that the contrary is the practice in Parliament.

blanks for time. But when a specific time stands part of a motion, that may be struck out as well as any other part of the motion; and when struck out, a motion may be received to insert any other. In fact, it is not till they are struck out, and a blank for the time thereby produced, that the rule can begin to operate, by receiving all the propositions for different times, and putting the questions successively on the longest. Otherwise, it would be in the power of the mover, by inserting originally a short time, to preclude the possibility of a longer. For, till the short time is struck out, you cannot insert a longer; and if, after it is struck out, you cannot do it, then it cannot be done at all. Suppose the first motion has been to amend by striking out "the second Tuesday in February," and inserting, instead thereof, "the first of June." It would have been regular then to divide the question, by proposing first the question to strike out and then that to insert. Now, this is precisely the effect of the present proceeding; only, instead of one motion and two questions, there are two motions and two questions to effect it; the motion being divided as well as the question.

When the matter contained in two bills might be better put into one, the manner is to reject the one, and incorporate its matter into another bill by way of amendment. So, if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. If a section is to be transposed, a question must

be put on striking it out where it stands, and another for inserting it in the place desired.

A bill passed by the one House, with blanks. These may be filled up by the other, by way of amendments, returned to the first, as such, and passed.—3 *Hats.* 83.

The number prefixed to the section of a bill being merely a marginal indication, and no part of the text of the bill, the clerk regulates that; the House or committee is only to amend the text.

## SECTION XXXVI.

### DIVISION OF THE QUESTION.

If a question contain more parts than one, it may be divided into two or more questions.—*Mem. in Hakew.* 29. But not as the right of an individual member, but with the consent of the House. For who is to decide whether a question is complicated or not? where it is complicated? into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House on a question, unless the House orders it to be divided: as on the question, Dec. 2, 1640, making void the election of the Knights of Worcester, on a motion it was resolved to make two questions of it, to wit, one on each Knight.—2 *Hats.* 85, 86. So, wherever there are several names in a question, they may be divided, and put one by one.—

9 *Grey*, 444. So, 1729, April 17, on an objection that a question was complicated, it was separated by amendment.—2 *Hats.* 79. 5.

The soundness of these observations will be evident from the embarrassments produced by the 10th rule of the Senate, which says, "If the question in debate contain several points, any member may have the same divided.

1798, May 30, the alien bill in quasi-committee. To a section and proviso in the original, had been added two new provisos by way of amendment. On a motion to strike out the section as amended, the question was desired to be divided. To do this, it must be put first on striking out either the former proviso, or some distinct member of the section. But when nothing remains but the last member of the section, and the provisos, they cannot be divided so as to put the last member to question by itself; for the provisos might thus be left standing alone as exceptions to a rule when the rule is taken away: or the new provisos might be left to a second question, after having been decided on once before at the same reading; which is contrary to rule. But the question must be on striking out the last member of the section as amended. This sweeps away the exceptions with the rule, and relieves from inconsistence. A question to be divisible, must comprehend points so distinct and entire, that one of them being taken away, the other may stand entire. But a proviso or exception, with an enacting clause, does not contain an entire point or proposition.

May 31. The same bill being before the Senate. There was a proviso, that the bill should not extend, 1. To any foreign minister; nor, 2. To any person to whom the President should give a passport; nor, 3. To any alien merchant, conforming himself to such regulations as the President shall prescribe; and division of the question into its simplest elements was called for. It was divided into four parts, the fourth taking in the words "conforming himself," etc. It was objected, that the words "any alien merchant" could not be separated from their modifying words "conforming," etc., because these words, if left by themselves, contain no substantive idea, will make no sense. But admitting that the divisions of a paragraph into separate questions must be so made as that each part may stand by itself, yet the House having, on the question, retained the first two divisions, the words "any alien merchant" may be struck out, and their modifying words will then attach themselves to the preceding description of persons, and become a modification of that description.

When a question is divided, after the question on the first member, the second is open to debate and amendment: because it is a known rule, that a person may rise and speak at any time before the question has been completely decided by putting the negative, as well as the affirmative side. But the question is not completely put when the vote has been taken on the first member only. One half

of the question, both affirmative and negative, still remains to be put.—See *Executive Journ.*, June 25, 1795. The same decision by President Adams.

## SECTION XXXVII.

### CO-EXISTING QUESTIONS.

It may be asked whether the House can be in possession of two motions or propositions at the same time? So that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House; and does not stand *ipso facto* before them at their next meeting, but must come forward in the usual way: so, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (*e. g.* the previous question, the postponement, or commitment) remove it from before the House. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the House when these are decided. None but the class of privileged questions can be brought forward while there is another question before the House; the rule being, that when a motion has been made and seconded no other can be received except it be a privileged one.

## SECTION XXXVIII.

### EQUIVALENT QUESTIONS.

If, on a question for rejection, a bill be retained, it passes of course to its next reading.—*Hakew.* 141. *Scob.* 42, and a question for a second reading determined negatively, is a rejection without farther question.—4 *Grey*, 149. And see *Elsynge's Memor.* 42, in what case questions are to be taken for rejection.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other.—4 *Grey*, 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two Houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

A bill originating in one House, is passed by the other with an amendment. A motion in the originating House, to agree to the amendment, is negatived. Do these result from this vote of disagreement? or must the question on disagreement be expressly voted? The questions respecting amendments from another House are, 1st. To agree: 2d. Disagree: 3d. Recede: 4th. Insist: 5th. Adhere.

1st. To agree.
2d. To disagree.

Either of these concludes the other necessarily, for the positive of either is exactly the equivalent of the negative of the other, and no other alternative remains. On either motion, amendments to the amendment may be proposed; *e. g.* if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

3d. To recede.
4th. To insist.
5th. To adhere.

You may then either insist or adhere. You may then either recede or adhere. You may then either recede or insist. Consequently, the negative of these is not equivalent to a positive vote the other way. It does not raise so necessary an implication as may authorize the secretary by inference to enter another vote; for two alternatives still remain, either of which may be adopted by the House.

## SECTION XXXIX.

### THE QUESTION.

The question is to be put first on the affirmative, and then on the negative side.

After the Speaker has put the affirmative part of the question, any member who has not spoken before the question, may rise and speak before the negative be put. Because it is no full question till the negative part be put.—*Scob.* 23; *Hats.* 73.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, etc., the Speaker most commonly supposes the consent of the House, where no objection is expressed, and does not give them the trouble of putting the question formally.—*Scob.* 22; 2 *Hats.* 87. 2. 87; 5 *Grey*, 129; 9 *Grey*, 301.

## SECTION XL.

### BILL, THIRD READING.

To prevent bills from being passed by surprise, the House, by a standing order, directs that they shall not be put on their passage before a fixed hour, naming one at which the House is commonly full.—*Hakew.* 153.

The usage of the Senate is, not to put bills on their passage till noon.

A bill reported and passed to the third reading, cannot on that day be read the third time and passed.

Because this would be to pass on two readings on the same day. At the third reading, the clerk reads the bill, and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be, Whether it shall pass? Formerly, the Speaker, or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the Speaker read when he declared the state of the bill at the several readings. Sometimes, however, he read the bill itself, especially on its passage.—*Hakew.* 136, 137, 153; *Coke*, 22, 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill, verbatim; only instead of reading the formal parts, "be it enacted," etc., he states that "the preamble recites so and so; the first section enacts, that, etc.; the second section enacts," etc.

But in the Senate of the United States, both of these formalities are dispensed with; the breviate presenting but an imperfect view of the bill, and being capable of being made to present a false one; and the full statement being a useless waste of time, immediately after a full reading by the clerk; and especially as every member has a printed copy in his hand.

A bill, on the third reading, is not to be committed for the matter or body thereof; but, to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual.—*Hakew.* 156; thus, 27 *El.* 1584, a bill was committed on the third reading, having been formerly committed on the second; but it is declared not usual.—*D'Ewes*, 137, *col.* 2. 414. *col.* 2.

When an essential provision has been omitted, rather than erase the bill, and render it suspicious, they add a clause on a separate paper, engrossed and called a rider, which is read, and put to the question three times.—*Elsynge's Memorials*, 59; 6 *Grey*, 335; 1 *Blackst.* 183. For examples of riders, see 3 *Hats.* 121, 122, 124, 126. Every one is at liberty to bring in a rider without asking leave.—10 *Grey*, 52.

It is laid down as a general rule, that amendments proposed at the second reading shall be twice read, and those proposed at the third reading thrice read; as also all amendments from the other House.—*Town. col.* 19, 23, 24, 25, 26, 27, 28.

It is with great, and almost invincible reluctance, that amendments are admitted at this reading, which occasion erasures or interlineations. Sometimes the proviso has been cut off from a bill; sometimes erased.—9 *Grey*, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

At this reading, the bill is debated afresh, and for the most part is more spoken to, at this time, than on any of the former readings.—*Hakew.* 153.

The debate on the question, Whether it should be read a third time? has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the House; they have had time to meet them with new arguments, and to put their old ones into new shapes.

The former vote has tried the strength of the first opinion, and furnished grounds to estimate the issue; and the question now offered for its passage, is the last occasion which is ever to be offered for carrying or rejecting it.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying, "Gentlemen, all you who are of opinion that this bill shall pass, say ay;" and after the answer of ayes, "All those of the contrary opinion, say no."—*Hakew.* 154.

After the bill has passed, there can be no further alteration of it in any point.—*Hakew.* 159.

## SECTION XLI.

### DIVISION OF THE HOUSE.

The affirmative and negative of the question having been both put and answered, the Speaker declares whether the yeas or nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the House. But if he be not himself satisfied which voice is the greater, or if, before any other member comes into the House, or before any new motion is made, (for it is too late after that,) any member shall rise and declare himself dissatisfied with the Speaker's decision, then the Speaker is to divide the House.—*Scob.* 24; 2 *Hats.* 140.

When the House of Commons is divided, the one party goes forth, and the other remains in the House.

This has made it important which go forth, and which remain; because the latter gain all the indolent, the indifferent, and inattentive. Their general rule, therefore, is, that those who give their vote for the preservation of the orders of the House shall stay in, and those who are for introducing any new matter, or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions and modifications.—2 *Rush.* p. 3, fol. 92; *Scob.* 43, 52; *Co.* 12, 116; *D'Ewes*, 505, *col.* 1; *Mem. in Hakew.* 25, 29; as will appear by the following statement of who go forth.

| | |
|---|---|
| Petition that it be received[1] | Ayes. |
| Read | Ayes. |
| Lie on the table | Noes. |
| Rejected after refusal to lie on the table | Noes. |
| Referred to a committee, or farther proceeding | Ayes. |
| Bill, that it be brought in | Ayes. |
| Read 1st or 2d time | Ayes. |
| Engrossed or read 3d time | Ayes. |
| Proceeding on every other stage | Ayes. |
| Committed | Ayes. |
| To a committee of the whole | Noes. |
| To a select committee | Ayes. |
| Report of a bill to lie on table | Noes. |

[1] Noes.—9 Grays, 365.

| | | |
|---|---|---|
| Be *now* read | Ayes. | |
| Be taken into consideration three months hence | 50 P. J 251. | |
| Amendments be read a 2d time | Noes. | |
| Clause offered on report of bill be read 2d time | | |
| For receiving a clause | Ayes. | 334 |
| With amendments be engrossed | | |
| That a bill be now read a 3d time | Noes. | 398 |
| Receive a rider | | 260 |
| Pass | Ayes. | 259 |
| Be printed | | |
| Committees. That A take the chair | | |
| To agree to the whole or any part of report | | |
| That the House do *now* resolve into a committee | | 291 |
| Speaker. That he now leave the chair, after order to go into committee | Noes. | |
| That he issue warrant for a new visit | | |
| Member. That none be absent without leave | | |
| Witness. That he be farther examined | Ayes. | 344 |

| | |
|---|---|
| Previous questions ..... | Noes. |
| Blanks. That they be filled with the largest sum..... | Ayes. |
| Amendments. That words stand part of ..... | |
| Lords. That their amendments be read a 2d time... | Ayes. |
| Messenger be received..... | Ayes. |
| Orders of the day to be now read, if before 2 o'clock.... | |
| If after 2 o'clock ..... | Noes. |
| Adjournment till the next sitting day, if before 4 o'clock, | Ayes. |
| If after 4 o'clock ..... | Noes. |
| Over a sitting day, (unless a previous resolution) ..... | Ayes. |
| Over the 30th January..... | Noes. |
| For sitting on Sunday, or any other day, not being a sitting day ..... | Ayes. |

The one party being gone forth, the Speaker names two tellers from the affirmative, and two from the negative side, who first count those sitting in the House, and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth, as they come in, and report the number to the Speaker.—*Mem. in Hakew.* 26.

A mistake in the report of the tellers may be rectified after the report made.—2 *Hats.* 145. Note.

But, in both Houses of Congress, all those intricacies are avoided. The ayes first rise, and are counted, standing in their places, by the President or Speaker. Then they sit, and the noes rise, and are counted in like manner.

In Senate, if they be equally divided, the Vice-President announces his opinion, which decides.

The Constitution, however, has directed that "the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal." And again, that in all cases of re-considering a bill disapproved by the President, and returned with his objections, "the votes of both Houses shall be determined by the yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journals of each House respectively."

By the 11th rule of the Senate, when the yeas and nays shall be called for by one-fifth of the members present, each member called upon shall, unless for special reasons he be excused by the Senate, declare openly, and without debate, his assent or dissent to the question. In taking the yeas and nays, and upon the call of the House, the names of the members shall be taken alphabetically.

When it is proposed to take a vote by yeas and nays, the President or Speaker states that "The question is whether, *e. g.*, the bill shall pass? That it is proposed that the yeas and nays shall be entered on the journal. Those, therefore, who desire it will rise." If he finds and declares that one-fifth have risen, he then states, that "those who are of opinion that the bill shall pass, are to answer in the affirmative, those of the contrary opinion, in the negative." The clerk then calls over the names alphabetically, notes the yea or nay of each, and gives the list to the President or Speaker, who declares the result. In Senate, if there be an equal division, the Secretary calls on the Vice-President, who notes his affirmative or negative, which becomes the decision of the House.

In the House of Commons, every member must give his vote the one way or the other.—*Scob.* 24. As it is not permitted to any one to withdraw who is in the House when the question is put, nor is any one to be told in the division who was not in when the question was put.—2 *Hats.* 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as the affirmative of the question is stated by the President at the same time, and the vote of both sides begins and proceeds *pari passu*. It is true, also, when the question is put in the usual way, if the negative has also been put. But if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question greatly deferred. And, as some who have answered ay, may have been changed by the new arguments, the affirmative must be put over again. If, then, the member entering may, by speaking a few words, occasion a repetition of the question, it would be useless to deny it on his simple call for it.

While the House is telling, no member may speak, or move out of his place; for, if any mistake be suspected, it must be told again.—*Mem. in Hakew.* 26; 2 *Hats.* 143.

If any difficulty arises in point of order, during the division, the Speaker is to decide peremptorily, subject to the future censure of the House, if irregular. He sometimes permits old experienced members to assist him with their advice, which they do sitting in their seats, covered to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours.—2 *Hats.* 143.

The voice of the majority decides. For the *lex*

*majoris partis* is the law of all councils, elections, etc., where not otherwise expressly provided.—*Hakew.* 93. But if the House be equally divided, "*semper presumatur pro negante:*" that is, the former law is not to be changed but by a majority.—*Towns. col.* 134.

But, in the Senate of the United States, the Vice-President decides, when the House is divided.—*Const. U. S.* Art. I. Sec. 2.

When, from counting the House, on a division, it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day.—2 *Hats.* 126.

1606, May 1, on a question whether a member having said Yea, may afterwards sit and change his opinion? a precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in 39 *Eliz.*, who in like case changed his opinion.—*Mem. in Hakew.* 27.

## SECTION XLII.

### TITLE.

After the bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

## SECTION XLIII.

### RE-CONSIDERATION.

When a question has been once made and carried in the affirmative or negative, it shall be in order for any member of the majority to move for the re-consideration thereof.—*Rule 22.*

1798, Jan. A bill on its second reading, being amended, and on the question, whether it shall be read a third time negatived, was restored by a decision to re-consider the question. Here the votes of negative and re-consideration, like positive and negative quantities in equation, destroy one another, and are as if they were expunged from the journals. Consequently the bill is open for amendment, just so far as it was the moment preceding the question for the third reading. That is to say, all parts of the bill are open for amendment, except those on which votes have been already taken in its present stage. So also may it be re-committed.

The rule permitting a re-consideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? If, after the vote, the paper on which it has passed has been parted with, there can be no re-consideration: as if a vote has been for the passage of a bill, and the bill has been sent to the other House. But where the paper remains, as on a bill rejected, when, or under what circumstances, does it cease to be susceptible of re-consideration? This remains to be settled, unless a sense that the right of re-consideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.

In Parliament, a question once carried, cannot be questioned again, at the same session; but must stand as the judgment of the House.—*Towns. col.* 67; *Memor. in Hakew.* 33. And a bill once rejected, another of the same substance cannot be brought in again the same session.—*Hakew.* 158; 6 *Grey*, 392. But this does not extend to prevent putting the same questions in different stages of a bill; because every stage of a bill submits the whole and every

part of it to the opinion of the House, as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, *e. g.* report of an address, the same question is before the House, and open for free discussion.—*Towns. col.* 26; 2 *Hats.* 98, 100, 101. So, orders of the House, or instructions to committees may be discharged. So a bill begun in one House, sent to the other, and there rejected, may be renewed again in that other, passed, and sent back.—*Ib.* 92; 3 *Hats.* 161. Or if, instead of being rejected, they read it once, and lay it aside, and put it off a month, they may offer in another to the same effect, with the same or a different title.—*Hakew.* 97, 98.

Divers expedients are used to correct the effects of this rule; as, by passing an explanatory act, if anything has been omitted or ill-expressed, 3 *Hats.* 278; or an act to enforce, and make more effectual an act, &c., or to rectify mistakes in an act, &c.; or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of reply.—2 *Hats.* 194. 6. Or the session may be closed for one, two, three, or more days, and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin *de novo*.—2 *Hats.* 94, 98. Or a part of the subject

may be taken up by another bill, or taken up in a different way.—6 *Grey*, 316.

And in cases of the last magnitude, this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether.—2 *Hats.* 92. 98. Thus, when the address on the preliminaries of peace, in 1782, had been lost by a majority of one; on account of the importance of the question, and smallness of the majority, the same question in substance, though with words not in the first, and which might change the opinions of some members, was brought on again and carried: as the motives for it were thought to outweigh the objections of form.—2 *Hats.* 99, 100.

A second bill may be passed, to continue an act of the same session; or to enlarge the time limited for its execution.—2 *Hats.* 95, 98. This is not in contradiction to the first act.

## SECTION XLIV.

### BILLS SENT TO THE OTHER HOUSE.

All bills passed in the Senate, shall before they are sent to the House of Representatives, be examined by the committees respectively who brought in such bills, or to whom the same have been last committed in Senate.—*Rule* 23.

A bill from the other House is sometimes ordered to lie on the table.—2 *Hats.* 97.

When bills, passed in one House and sent to the other, are grounded on special facts requiring proof, it is usual, either by message, or at a conference, to

ask the grounds and evidence; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated.—3 *Hats.* 48.

## SECTION XLV.

### AMENDMENTS BETWEEN THE HOUSES.

When either House, *e. g.* the House of Commons, sends a bill to the other, the other may pass it with amendments. The regular progression in this case is, that the Commons disagree to the amendment; the Lords insist on it; the Commons insist on their disagreement; the Lords adhere to their amendment; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose, to keep the question open. But the first adherence by either renders it necessary for the other side to recede or adhere also; when the matter is usually suffered to fall.—10 *Grey*, 148. Latterly, however, there are instances of their having gone to a second adherence. There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would be endless.—3 *Hats.* 268, 270. The term of insisting, we are told by Sir John Trevor, was then [1679] newly introduced into Parliamentary usage, by the Lords.—7 *Grey*, 94. It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the House to a concurrence.

Either House, however, is free to pass over the term of insisting, and to adhere in the first instance.—10 *Grey*, 146. But it is not respectful to the other. In the ordinary Parliamentary course, there are two free conferences at least before adherence.—10 *Grey*, 147.

Either House may recede from its amendment, and agree to the bill; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment. For here the disagreement and receding destroy one another, and the subject stands as before the disagreement.—*Elsynge*, 23, 27; 9 *Grey*, 476.

But the House cannot recede from or insist on, its own amendment with an amendment, for the same reason that it cannot send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by ingrafting an amendment on it, because they have never assented to it; but they cannot amend their own amendment, because they have, on the question, passed it in that form; 9 *Grey*, 353; 10 *Grey*, 240. In Senate, March 29, 1798. Nor where one House has adhered to their amendment, and the other agrees with an amendment, can the first House depart from the form which they have fixed by an adherence.

In the case of a money bill, the Lords' proposed amendments become, by delay, confessedly necessary. The Commons, however, refused them, as

infringing on their privilege as to money bills, but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords' amendments, and urged, that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way.—3 *Hats.* 256, 266, 270, 271. But the Lords refused and the bill was lost, 1 *Chand.* 288. A like case, 1 *Chand.* 311. So the Commons resolve, that it is unparliamentary to strike out at a conference anything in a bill which hath been agreed and passed by both Houses, 6 *Grey*, 274; 1 *Chand.* 312.

A motion to amend an amendment from the other House, takes precedence of a motion to agree or disagree.

A bill originating in one House, is passed by the other with an amendment.

The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment; that being only in the second and not the third degree. For, as to the amending House, the first amendment with which they passed the bill is a part of its text; it is the only text they have agreed to. The amendment to that text by the originating House, therefore, is only in the first degree, and the amendment to that again by the amending House is only in the second, to wit, an amendment to an amendment, and so admissible. Just so when, on a bill from the originating

House, the other, at its second reading, makes an amendment; on the third reading, this amendment is become the text of the bill, and if an amendment to it be moved, an amendment to that amendment may also be moved, as being only in the second degree.

## SECTION XLVI.

### CONFERENCES.

It is on the occasion of amendments between the Houses that conferences are usually asked; but they may be asked in all cases of difference of opinion between the two Houses on matters depending between them. The request of a conference, however, must always be by the House which is possessed of the papers.—3 *Hats.* 71; 1 *Grey*, 435; 4 *Hats.* 3, 43.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the House asking it, and they are read and delivered without debate, to the managers of the other House at the conference; but are not then to be answered. —3 *Grey*, 144. The other House then, if satisfied, vote the reasons satisfactory, or say nothing; if not satisfied, they resolve them not satisfactory, and ask a conference on the subject of the last conference, where they read and deliver in like manner written answers to those reasons.—3 *Grey*, 183. They are meant chiefly to record the justification of each House to the nation at large, and to posterity, and in proof that the miscarriage of a necessary measure is not

imputable to them.—3 *Grey*, 255. At free conferences, the managers discuss *viva voce* and freely, and interchange propositions for such modifications as may be made in a Parliamentary way, and may bring the sense of the two Houses together. And each party reports in writing to their respective Houses the substance of what is said on both sides, and it is entered in their journals.—6 *Grey*, 220; 3 *Hats.* 280. (*Vide Joint Rules*, 1.) This report cannot be amended or altered as that of a committee may be.—*Journ. Senate*, May 24, 1796.

A conference may be asked, before the House asking it has come to a resolution of disagreement, insisting or adhering.—3 *Hats.* 269, 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding. For, as was urged by the Lords on a particular occasion, "it is held vain, and below the wisdom of Parliament, to reason or argue against fixed resolutions, and upon terms of impossibility to persuade."—3 *Hats.* 226. So the Commons say "an adherence is never delivered at a free conference, which implies debate."—10 *Grey*, 147. And on another occasion, the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons, that nothing was more Parliamentary than to proceed with free conferences after adhering; 3 *Hats.*

269; and we do in fact see instances of conference or of free conference, asked after the resolution of disagreeing.—3 *Hats.* 251, 253, 260, 286, 291, 316, 349, of insisting, *ib.* 280, 296, 299, 319, 322, 355, of adhering, 269, 270, 283, 300; and even of a second or final adherence.—3 *Hats.* 270. And in all cases of conference asked after a vote of disagreement, &c., the conferees of the House asking it are to leave the papers with the conferees of the other; and in one case where they refused to receive them, they were left on the table in the conference chamber.—3 *Hats.* 271, 317, 323, 354; 10 *Grey,* 146. The Commons affirm, that it is usual to have two free conferences or more before either House proceeds to adhere, because, before that time, the Houses have not had the full opportunity of making replies to one another's arguments, and, to adhere so suddenly and unexpectedly, excludes all possibility of offering expedients.—4 *Hats.* 330.

After a free conference the usage is to proceed with free conferences, and not to return again to a conference.—3 *Hats.* 270; 9 *Grey,* 229.

After a conference denied, a free conference may be asked.—1 *Grey,* 45.

When a conference is asked, the subject of it must be expressed, or the conference not agreed to.—*Ord. H. Com.* 89; 1 *Grey,* 425; 7 *Grey,* 31. They are sometimes asked to inquire concerning an offence or default of a member of the other House, 6 *Grey,* 181; 1 *Chand.* 304; or the failure of the other House to

present to the King a bill passed by both Houses, 8 *Grey*, 302; or on information received, and relating to the safety of the nation, 10 *Grey*, 711, or when the methods of Parliament are thought by the one House to have been departed from by the other, a conference is asked to come to a right understanding thereon.—10 *Grey*. 148. So, when an unparliamentary message has been sent, instead of answering it, they ask a conference.—3 *Grey*, 155. Formerly, an address, or articles of impeachment, or a bill with amendments, or a vote of the House, or concurrence in a vote, or a message from the King, were sometimes communicated by way of conference.—7 *Grey*, 128, 300, 387; 7 *Grey*, 80; 8 *Grey*, 210, 255; 1 *Torbuck's Deb.* 278; 10 *Grey*, 293; 1 *Chandler*, 49, 287. But this is not modern practice.—8 *Grey*, 255.

A conference has been asked after the first reading of a bill. 1 *Grey*, 194. This is a singular instance. During the time of a conference, the House can do no business. As soon as the names of the managers are called over, and they are gone to the conference, the Speaker leaves the chair, without any question, and resumes it in the return of the managers. It is the same while the managers of an impeachment are at the House of Lords.—4 *Hats.* 47, 209, 288.

## SECTION XLVII.

### MESSAGES.

Messages between the Houses are to be sent only while both Houses are sitting.—3 *Hats.* 15. They are received during a debate, without adjourning the debate.—3 *Hats.* 22.

In Senate, the messengers are introduced in any state of business, except—1. While a question is putting. 2. While the yeas and nays are calling. 3. While the ballots are calling. The first case is short: the second and third are cases where any interruption might occasion errors difficult to be corrected.—So arranged, June 15th, 1798.

In the House of Representatives, as in Parliament, if the House be in a committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into a committee, without any question or interruption.—4 *Grey*, 226.

Messengers are not saluted by the members, but by the Speaker, for the House.—2 *Grey*, 253, 274.

If messengers commit an error in delivering their messages, they may be admitted, or called in, to correct their message.—4 *Grey*, 41. Accordingly, March 13, 1800, the Senate having made two amendments to a bill from the House of Representatives, their secretary, by mistake, delivered one only; which being inadmissible by itself, that House disagreed, and notified the Senate of their disagreement. This produced a discovery of the mistake. The secretary was sent to the other House to correct his mistake, the correction was received, and the two amendments acted on *de novo*.

As soon as the messenger, who has brought bills

from the other House, has retired, the Speaker holds the bills in his hand, and acquaints the House, "That the other House have, by their messenger, sent certain bills," and then reads their titles, and delivers them to the clerk to be safely kept till they shall be called for to be read.—*Hakew.* 178.

It is not the usage for one House to inform the other by what numbers a bill has passed.—10 *Grey*, 150. Yet they have sometimes recommended a bill as of great importance to the consideration of the House to which it is sent.—3 *Hats.* 25. Nor when they have rejected a bill from the other House, do they give notice of it; but it passes *sub silentio* to prevent unbecoming altercation.—1 *Black.* 133.

But in Congress the rejection is notified by message to the House in which the bill originated.

A question is never asked by the one House of the other by way of message, but only at a conference; for this is an interrogatory, not a message.—3 *Grey*, 151, 181.

When a bill is sent by one House to the other, and is neglected, they may send a message to remind them of it.—3 *Hats.* 25; 5 *Grey*, 154. But if it be mere inattention, it is better to have it done informally, by communications between the Speakers, or members of the two Houses.

Where the subject of a message is of a nature that it can properly be communicated to both Houses of Parliament, it is expected that this communication

should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party, to which the message referred, its being sent to one House was not noticed by the other, because the declaration, being original, could not possibly be sent to both Houses at the same time.—2 *Hats.* 260, 261, 262.

The King having sent original letters to the Commons, afterwards desires they may be returned, that he may communicate them to the Lords.—1 *Chandler*, 303.

## SECTION XLVIII.

### ASSENT.

The House which has received a bill, and passed it, may present it for the King's assent, and ought to do it, though they have not by message notified to the other their passage of it. Yet the notifying by message is a form which ought to be observed between the two Houses, from motives of respect and good understanding.—3 *Hats.* 242. Were the bill to be withheld from being presented to the King, it would be an infringement of the rules of Parliament.—2 *Hats.* 242.

When a bill has passed both Houses of Congress, the House last acting on it notifies its passage to the other, and delivers the bill to the joint committee of enrolment, who see that it is truly enrolled in parchment. When the bill is enrolled, it is not to be written in paragraphs, but solidly and all of a piece, that the blanks within the paragraphs may not give room for forgery.—9 *Grey*, 143. It is then put in the hands of the clerk of the House of Representatives, to have it

signed by the Speaker. The clerk then brings it by way of message to the Senate, to be signed by their President. The secretary of the Senate returns it to the committee of enrolment, who present it to the President of the United States. If he approves, he signs and deposits it among the rolls in the office of the Secretary of State, and notifies by message the House in which it originated, that he has approved and signed it; of which that House informs the other by message. If the President disapproves, he is to return it, with his objections, to the House in which it shall have originated; who are to enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the President's objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law.—*Const. U. S.*, Art. I. Sec. 7.

## SECTION XLIX.

### JOURNALS.

Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.—*Const. U. S.*, Art. I. Sec. 7.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy.—*Const.*, I. 5, 3.

Every vote of Senate shall be entered on the journal, and a brief statement of the contents of each petition, memorial, or paper, presented to the Senate, be also inserted on the journal.—*Rule* 24.

The proceedings of the Senate, when not acting as in a committee of the House, shall be entered on the journals, as concisely as possible, care being taken to detail a true account of the proceedings.—*Rule* 26.

The titles of bills, and such part thereof only as shall be affected by proposed amendments, shall be inserted on the journals.—*Rule* 27.

If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote; but when suppressed by the previous question, the first question must be stated, in order to introduce, and make intelligible, the second.—2 *Hats.* 83.

So also, when a question is postponed, adjourned, or laid on the table, the original question, though not yet a vote, must be expressed in the journals; because it makes part of the vote of postponement, adjourning, or laying on the table.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the House. The rule of entering in the journals only what the House has agreed to, is founded in great prudence and good sense; as there may be many questions proposed which it may be improper to publish to the world, in the form in which they are made.—2 *Hats.* 85.

In both Houses of Congress, all questions whereon the yeas and nays are desired by one-fifth of the members present, whether decided affirmatively or negatively, must be entered on the journals.—*Const.*, I. 5, 3.

The first order for printing the votes of the House of Commons, was October 30, 1685.—1 *Chandler*, 387.

Some judges have been of opinion, that the journals of the House of Commons are no records, but remembrances. But this is no law.—*Cob.* 110, 111;

*Lex. Parl.* 114, 115; *Jour. H. C.* Mar. 17, 1592; *Hale, Parl.* 105. For the Lords, in their House, have power of judictaure; the Commons, in their House, have power of judicature; and both Houses together have power of judicature; and the book of the clerk of the House of Commons is a record, as is affirmed by act of Parliament.—6 *H.* 8. *c.* 16; *Inst.* 23, 24; and every member of the House of Commons has a judicial place.—4 *Inst.* 15. As records, they are open to every person; and a printed vote of either House is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case.—2 *Hats.* 261; 3 *Hats.* 27, 30. Every member has a right to see the journals, and to take and publish votes from them. Being a record, every one may see and publish them.—6 *Grey*, 118, 119.

On information of a mis-entry or omission of an entry in the journal, a committee may be appointed to examine and rectify it, and report it to the House.—2 *Hats.* 194, 5.

## SECTION L.

### ADJOURNMENT.

The two Houses of Parliament have the sole, separate, and independent power of adjourning, each their respective Houses. The King has no

authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either House to comply with his requisition, or not, as they see fitting.—2 *Hats.* 332; 1 *Blackstone*, 186; 5 *Grey*, 122.

By the Constitution of the United States, a smaller number than a majority may adjourn from day to day.—I. 5. But neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.—I. 5. The President may on, extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper.—*Const.* II. 3.

A motion to adjourn simply, cannot be amended as by adding, "To a particular day." But must be put simply, "That this House do now adjourn?" and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution, "That at its rising, it will adjourn to a particular day;" and then the House is adjourned to that day.—2 *Hats.* 82.

Where it is convenient that the business of the House be suspended for a short time, as for a conference presently to be held, &c., it adjourns during pleasure.—2 *Hats.* 305. Or for a quarter of an hour. —5 *Grey*, 331.

If a question be put for adjournment, it is no adjournment till the Speaker pronounces it.—5 *Grey*, 137. And from courtesy and respect, no member leaves his place till the Speaker has passed on.

## SECTION LI.

### A SESSION.

Parliament have three modes of separation, to wit, by adjournment, by prorogation, by dissolution by the King, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act has passed. In this case, all matters depending before them are discontinued, and at their next meeting are to be taken up *de novo*, if taken up at all.—1 *Blackstone*, 186. Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, or for a fortnight, a month, etc., *ad libitum*. All matters depending remain in *statu quo*, and when they meet again, be the term ever so distant, are resumed without any fresh commencement, at the point at which they were left.—1 *Lev.* 165; *Lex. Parl. c.* 2; 1 *Ro. Rep.* 29; 4 *Inst.* 7, 27, 28; *Hut.* 61; 1 *Mod.* 152; *Ruffh. Jac. L. Dict. Parliaments*; *Blackstone*, 186. Their whole session is considered in law but as one day, and has relation to the first day thereof.—*Bro. Abro. Parliament*, 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation.—5 *Grey*, 374; 9 *Grey*, 350; 1 *Chandler*, 50. Neither House can continue any portion of itself in any Parliamentary function, beyond the end of the session, without the consent of the other two branches.

When done, it is by a bill constituting them commissioners for the particular purpose.

Congress separate in two ways only, to wit, by adjournment or dissolution by the efflux of their time. What then constitutes a session with them? A dissolution certainly closes one session, and the meeting of the new Congress begins another. The Constitution authorizes the President, "On extraordinary occasions, to convene both Houses, or either of them."—Art. I. Sec. 3. If convened by the President's proclamation, this must begin a new session, and of course determine the preceding one to have been a session. So, if it meets under the clause of the Constitution, which says, "The Congress shall assemble, at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day,"—I. 4,—this must begin a new session. For even if the last adjournment was to this day, the act of adjournment is merged in the higher authority of the Constitution, and the meeting will be under that, and not under their adjournment. So far we have fixed landmarks for determining sessions. In other cases, it is declared by the joint vote authorizing the President of the Senate and the Speaker to close the session on a fixed day, which is usually in the following form, "Resolved, by the Senate and House of Representatives, that the President of the Senate and the Speaker of the House of Representatives, be authorized to close the present session, by adjourning their respective Houses on the —— day of ——."

When it was said above, that all matters depending before Parliament were discontinued by the determination of the session, it was not meant for judiciary cases, depending before the House of Lords, such as impeachments, appeals, and writs of error. These stand continued of course to the next session.—*Raym.* 120, 381; *Ruffh. Jac. L. D. Parliament.*

Impeachments stand in like manner continued before the Senate of the United States.

## SECTION LII.

### TREATIES.

The President of the United States has power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.—*Const. U. S.*, Art. II. Sec. 2.

Resolved, That all confidential communications, made by the President of the United States to the Senate, shall be, by the members thereof, kept inviolably secret; and that all treaties, which may hereafter be laid before the Senate, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secresy.—*Dec. 22d*, 1804.

Treaties are legislative acts. A treaty is a law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power; and there, also, if they touch the laws of the land, they must be approved by Parliament. Ware *vs.* Hilton.—3 *Dallas's Rep.* 199. It is acknowledged, for instance, that the King of Great Britain cannot, by a treaty, make a citizen of an alien.—*Vattel, b.* 1, *c.* 19, *sec.* 214. An act of Parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht, in 1712, the commercial articles required the concurrence of Parliament. But a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, and adhered to the rest of the

treaty.—4 *Russell's Hist. Mod. Europe*, 457; 2 *Smollet*, 242, 246.

By the Constitution of the United States, this department of legislation is confined to two branches only, of the ordinary Legislature; the President originating, and Senate having a negative. To what subject this power extends, has not been defined in detail by the Constitution; nor are we entirely agreed among ourselves. 1. It is admitted that it must concern the foreign nation, party to the contract, or it would be a mere nullity *res inter alias acta*. 2. By the general power to make treaties, the Constitution must have intended to comprehend only those objects which are usually regulated by treaty, and cannot be otherwise regulated. 3. It must have meant to except out of these the rights reserved to the States; for surely the President and Senate cannot do by treaty what the whole government is interdicted from doing in any way. 4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives. This last exception is denied by some, on the ground that it would leave very little matter for the treaty power to work on. The less the better, say others. The Constitution thought it wise to restrain the Executive and Senate from entangling and embroiling our affairs with those of Europe. Besides, as the negotiations are carried on by the Executive alone, the subjecting to the ratification of the Representatives such articles as are within their participation, is no more inconvenient than to the Senate. But the ground of this exemption is denied as unfounded. For examine, *e. g.*, the treaty of commerce with France, and it will be found that out of thirty-one articles, there are not more than small portions of two or three of them which would not still remain as subjects of treaties, untouched by these exceptions.

Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the Legislature alone can declare them infringed and rescinded. This was accordingly the process adopted in the case of France, 1798.

It has been the usage of the Executive, when it communicates a treaty to the Senate for their ratification, to communicate also the correspondence of the negotiations. This having been omitted in the case of the Prussian treaty, was asked by a vote of the House of February 12, 1800, and was obtained. And in December, 1800, the Convention of that year, between the United States and France, with

the report of the negotiations by the Envoys, but not their instructions, being laid before the Senate, the instructions were asked for, and communicated by the President.

The mode of voting on questions of ratification is by nominal call.

Resolved, as a standing rule, That whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time for information only; when no motion to reject, ratify, or modify the whole or any part, shall be received.

That its second reading shall be for consideration; and on a subsequent day, when it shall be taken up as in a committee of the whole, and every one shall be free to move a question on any particular article in this form: "Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or leaving out words, in which last case the question shall be, "Shall the words stand part of the article?" And in every of the said cases, the concurrence of two-thirds of the Senators present shall be required to decide affirmatively. And when through the whole, the proceedings shall be stated to the House, and questions be again severally put thereon for confirmation, or new ones proposed, requiring in like manner a concurrence of two-thirds for whatever is retained or inserted.

That the votes so confirmed shall, by the House or a committee thereof, be reduced into the form of a ratification with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case the question shall be, "Shall the words stand part of the resolution?" And in both cases the concurrence of two-thirds shall be requisite to carry the affirmative; as well as on the final question to advise and consent to the ratification in the form agreed to.—*Rule of Jan.* 6, 1801.

Resolved, That when any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who voted on that side which prevailed in the question may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes.—*Rule of Feb.* 3, 1801.

## SECTION LIII.

### IMPEACHMENT.

These are the provisions of the Constitution of the United States on the subject of impeachments. The following is a sketch on some of the principles and practices of England on the same subject.

The House of Representatives shall have the sole power of impeachment.—*Const. U. S.*, Art. I. Sec. 3.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.—*Const. U. S.*, Art. I. Sec. 3.

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.—*Const. U. S.*, Art. II. Sec. 4.

The trial of crimes, except in cases of impeachment, shall be by jury.—*Const. U. S.*, Art. III. Sec. 2.

*Jurisdiction.*—The Lords cannot impeach any to themselves, nor join in the accusation, because they are judges.—*Seld. Judic. in Parl.* 12, 63. Nor can they proceed against a commoner, but on complaint of the Commons.—*Ib.* 84. The Lords may not, by the law, try a commoner for capital offence, on the information of the King, or a private person; because the accused is entitled to a trial by his peers gener-

ally; but on accusation by the House of Commons, they may proceed against the delinquent, of whatsoever degree, and whatsoever be the nature of the offence; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgment is given on their demand, which is instead of a verdict. So the Lords do only judge but not try the delinquent.—*Ib.* 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the Lords, even by the Commons; and cites Fitzharris's case, 1681, impeached of high treason, where the Lords remitted the prosecution to the inferior court.—8 *Grey's Deb.* 325, 6, 7; 2 *Wooddeson*, 601, 576; 3 *Seld.* 1610, 1619, 1641; 4 *Black.* 257; 3 *Seld.* 1604, 1618, 9. 1656.

*Accusation.*—The Commons, as the grand inquest of the nation, become suitors for penal justice.—2 *Woodd.* 597; 6 *Grey*, 356. The general course is to pass a resolution, containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation, at the bar of the House of Lords, in the name of the Commons. The person signifies, that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the Peers will take order for his appearance. —*Sachev. Trial.* 325; 2 *Woodd.* 602, 605; *Lords' Jour.* 3 June, 1701; 1 *Wms.* 616; *Grey*, 324.

*Process.*—If the party do not appear, proclamations are to be issued giving him a day to appear,

On their return they are strictly examined. If any error be found in them, a new proclamation issues, giving a short day. If he appear not, his goods may be arrested, and they may proceed.—*Seld. Jud.* 98, 99.

*Articles.*—The accusation (article) of the Commons, is substituted in place of an indictment. Thus, by the usage of Parliament, an impeachment for writing or speaking the particular words, need not be specified.—*Sach. Tr.* 325; 2 *Woodd.* 602, 605; *Lords' Journ.* 3 June, 1701; 1 *Wms.* 616.

*Appearance.*—If he appears, and the case be capital, he answers in custody; though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers a Lord in his place, a Commoner at the bar, and not in custody, unless, on the answer, the Lords find cause to commit him till he find sureties to attend, and lest he should fly.—*Seld. Jud.* 98, 99. A copy of the articles is given him, and a day fixed for his answer.—*T. Ray*; 1 *Rushw.* 268; *Fost.* 232. 1 *Clar. Hist. of the Reb.* 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney.—*Seld. Jud.* 100. The general rule on accusation for a misdemeanor is, that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer.—*Seld. Jud.* 101. If previously committed by the Commons, he answers as a prisoner. But this may be called, in

some sort, *judicium parium suorum.*—*Seld. Jud.* In misdemeanors, the party has a right to counsel by the common law; but not in capital cases.—*Jud. Seld.* 102–5.

*Answer.*—The answer need not observe great strictness of form. He may plead guilty as to part, and defend as to the residue; or, saving all exceptions, deny the whole, or give a particular answer to each article separately.—1 *Rush.* 247; 2 *Rush.* 1374; 12 *Parl. Hist.* 442; 3 *Lords' Journ.* 13 Nov., 1643; 2 *Woodd.* 607. But he cannot plead a pardon in bar to the impeachment.—2 *Woodd.* 618; 2 *St. Tr.* 735.

*Replication, rejoinder, &c.*—There may be a replication, rejoinder, &c.—*Seld. Jud.* 114; 8 *Grey's Deb.* 233; *Sach. Tr.* 15; *Journ. House of Commons,* 6 March, 1640, 1.

*Witnesses.*—The practice is to swear the witnesses in open House, and then examine them there: or a committee may be named, who shall examine them in committee either on interrogatories agreed on in the House, or such as the committee, in their discretion, shall demand.—*Seld. Jud.* 120, 123.

*Jury.*—In the case of Alice Pierce, 1 *R.* 2. a jury was empannelled for her trial before a committee.—*Seld. Jud.* 123. But this was on a complaint, not an impeachment by the Commons.—*Seld. Jud.* 163. It must also have been for a misdemeanor only, as the Lords Spiritual sat in the case, which they do on misdemeanors, but not in capital cases.—*Seld. Jud.* 148. The judgment was a forfeiture of all her lands

and goods.—*Seld. Jud.* 188. This, Selden says, is the only jury he finds recorded in Parliament for misdemeanors; but he makes no doubt if the delinquent doth put himself on the trial of his country, a jury ought to be empannelled: and he adds, that it is not so on impeachment by the Commons; for they are in *oco proprio*, and here no jury ought to be empannelled.—*Ib.* 124. The Lord Berkeley, 6 *E.* 3, was arraigned for the murder of, *L.* 2, on an information on the part of the King, and not on impeachment of the Commons; for then they had been *patria sua.* He waived his peerage, and was tried by a jury of Gloucestershire and Warwickshire.—*Ib.* 125. In one, 1 *H.* 7, the Commons protest that they are not to be considered as parties to any judgment given, or hereafter to be given in Parliament. —*Ib.* 133. They have been generally, and more justly considered, as is before stated, as the grand jury. For the conceit of Selden is certainly not accurate, that they are the *patria sua* of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try. For they examine witnesses as to the facts, and acquit or condemn according to their own belief of them. And Lord Hale says, "the Peers are judges of law as well as of fact."—2 *Hale, P. C.* 275. Consequently of fact as well as of law.

*Presence of Commons.*—The Commons are to be present at the examination of witnesses.—*Seld. Jud.* 124. Indeed, they are to attend throughout, either

as a committee of the whole House; or otherwise, at discretion, appoint managers to conduct the proofs. —*Rushw. Tr. of Straff.* 37; *Com. Journ.* 4 Feb., 1709, 10; 2 *Wood.* 614. And judgment is not to be given till they demand it.—*Seld. Jud.* 124. But they are not to be present on impeachment when the Lords consider of the answer or proofs, and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital— *Ib.* 58, 159; as well as not capital, 162. The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question, or particular sentence, is out of that which seemeth to be most generally agreed on.—*Seld. Jud.* 167; 2 *Wood.* 612.

*Judgment.*—Judgments in Parliament, for death, have been strictly guided *per legem terræ*, which they cannot alter; and not at all according to their discretion. They can neither admit any part of the legal judgment, nor add to it. Their sentence must be *secundum, non ultra legem.*—*Seld. Jud.* 168, 169, 170, 171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments were not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment, therefore, is to be such as is war-

ranted by legal principles or precedents.—6 *Stra. Tr.* 14; 2 *Wood.* 611. The Chancellor gives judgments in misdemeanors; the Lord High Steward, formerly, in cases of life and death.—*Seld. Jud.* 180. But now the Steward is deemed not necessary.—*Fost.* 144; 1 *Woodd.* 613. In misdemeanors, the greatest corporal punishment hath been imprisonment.—*Seld. Jud.* 184. The King's assent is necessary in capital judgments, (but 2 *Woodd.* 614. contra.) but not in misdemeanors.—*Seld. Jud.* 136.

*Continuance.*—An impeachment is not discontinued by the dissolution of Parliament; but may be resumed by the new Parliament.—*T. Ray.* 383; 5 *Com. Jour.* 23 Dec., 1790; *Lords' Jour.* May 16, 1791; 2 *Wood.* 618.

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